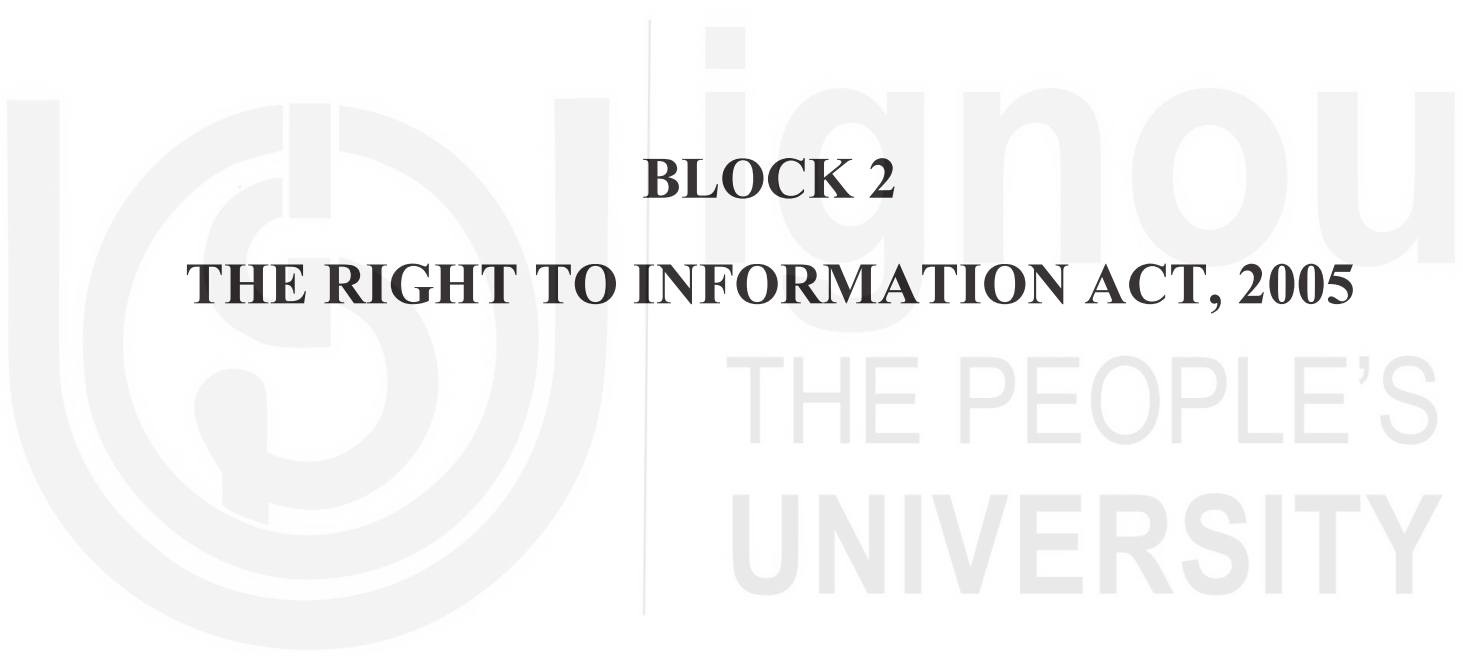




BLOCK 2

THE RIGHT TO INFORMATION ACT, 2005

BLOCK 2 THE RIGHT TO INFORMATION ACT, 2005

There are four Units in this Block. The second Unit of this Course is related to overview of the Right to Information (RTI) Act, 2005. It looks upon overall mechanism of the RTI regime provided under the Act. The RTI Act consists of six Chapters and thirty-one Sections. This Unit focuses on Chapter one of the Act, that is, preliminary in nature; and stating title, extent and commencement of the Act. Section 2 is definition clause explaining the various important terms used in the text of the Act. Chapter two explains the right to information and obligation of public authorities in supply of information. It discusses how an RTI application is to be filed and on what grounds rendering of information is refused. The study emphasises on analysis of powers and functions of the Information Commissioners, both at the level of Centre and State as given in Chapters three and four, along with provisions of appeal and penalty provided in Chapter five. It also highlights the issues of file noting and third party information along with ancillary provisions of retrospective effect and overriding effect of the Act.

The third Unit analyses importance and role of rule-making power under the RTI Act, 2005. The Rules are very important for making provisions of any Act effective. Before the coming into being of Right To Information (RTI) Rules 2012, the Right To Information (Regulation of Fee and Cost) Rules, 2005, the Central Information Commission (Appeal Procedure) Rules, 2005 and the Central Information Commission (CIC) (Management) Regulations 2007 were governing principles for the Right To Information Act, 2005. This Unit deals, in detail, with rules regarding fees for application of the RTI; and appeal to the Commission and authorities under the RTI Rules, 2012. It enumerates various steps taken by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India for the improvement in rules of the RTI. Harmonisation of the RTI (Fee & Cost) Rules and Appeal Procedure Rules were also made in order to bring uniformity of provisions regarding fees and appeal throughout India. In order to facilitate the citizens in filing the RTI application, electronic Indian Postal Order (eIPO) service was launched and this facility was extended to Indian citizens living abroad too.

The fourth Unit discusses about the Central Information Commission(CIC), which was established in 2005 with the enforcement of the RTI Act, 2005. It is one of the pillars of the RTI on which the RTI regime stands. The CIC is an appellate authority within the provisions of the RTI Act. It is a quasi-judicial body with powers of a civil court. This Unit refers to the constitution, powers and functions of the CIC, along with its appellate jurisdiction. Its powers to receive complaints, appeals and imposition of penalty are also discussed. The RTI (Amendment) Act, 2019 has been enacted along with corresponding RTI, Rules 2019. This Amendment and Rules of 2019 have

brought remarkable changes in the appointment and service conditions of the Chief Information Commissioner and that of the Information Commissioners. This Unit highlights these changes and focuses on some very important leading cases decided by the CIC in order to give an insight into the working of the CIC. In the end, it brings out the facts by evaluating the CIC with the acknowledgment that in recent times its working has improved in giving justice to the information seekers.

The last Unit of this Block, emphasises on the State Information Commissions (SICs). The State governments are mandated to establish the SIC under the provisions of sub-section 1 of Section 15 of the RTI Act, 2005. The SIC is an appellate authority within the provisions of the RTI Act. It is a quasi-judicial body with powers of a civil court. This Unit refers to the constitution, powers and functions of the SIC, along with its appellate jurisdiction. The SIC has power to receive complaints, appeals and imposition of penalty, in case of default in supplying desired information by the public authority to the RTI applicant. The RTI (Amendment) Act, 2019 and corresponding RTI, Rules of 2019 have introduced changes in the appointment and service conditions of the Chief Information Commissioner and that of Information Commissioners of the SIC. This Unit incorporates information from the official websites of the different SICs, so as to reveal working and activities of these Commissions. This Unit concludes by evaluating the SICs with the suggestion that its performance needs to be improved with proper training and workshops for ensuring good governance.

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UNIT 2 THE RIGHT TO INFORMATION ACT, 2005: AN OVERVIEW*

Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Framework of the RTI Act, 2005
- 2.3 Eligibility for the Right to Information
- 2.4 Obligations of Public Authority
- 2.5 Authorities under the RTI Act
- 2.6 Enforcement of Right to Information under the Act
- 2.7 Dissemination of Proactive Disclosure
- 2.8 Exemption from Disclosure of Information
 - 2.8.1 Non-disclosure Clause
 - 2.8.2 Exemption under Second Schedule
 - 2.8.3 Exception under Section 9
- 2.9 Overriding Effect of the RTI Act from Disclosure of Information
- 2.10 The RTI Act: Retrospective Effect
- 2.11 Appraisal
- 2.12 Conclusion
- 2.13 Glossary
- 2.14 References
- 2.15 Answers to Check Your Progress Exercises

2.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the RTI Act and its working;
- Explain the meaning of important terms under the RTI Act;
- Analyse the mechanism of the RTI regime; and
- Highlight the practical aspect of the RTI law and means to follow it.

* Contributed by Prof. (Dr) Preeti Misra, Head, Department of Human Rights, School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, Uttar Pradesh.

2.1 INTRODUCTION

The Parliament of India enacted the Right to Information (RTI) Act, 2005 in order to give effect to people's right to know. This enactment was preceded by the Freedom of Information Act, 2002, which could never come into effect. As a matter of fact, in various states the RTI Acts came into operation much before the RTI Act, 2005 became operative from 12th October, 2005. It covers both Central and State level governing machinery. The Act of 2005 has overriding effect, since in case of conflict between the Centre and State law, the Central law shall prevail. The Right to Information Act has definitely been a powerful empowering legislation for citizens of India. Success of the RTI Act can be gauged from the fact that every year near about six to eight million applications are filed seeking one or other kind of information. The Supreme Court's leading judgments (State of UP v. Raj Narain, AIR 1975 SC 865; S. P. Gupta v. President of India, AIR 1982 SC 149) have regarded the RTI as intrinsic part of fundamental rights under Article 19(1)(a) of the Constitution, which embraces the true democratic ideal of freedom of expression. In a democracy, the citizen's voice must be free and unhindered.

Internationally, it has been accepted that freedom of expression includes the right to be informed. Without the right to information, freedom of expression cannot be fully realised. An uninformed citizenry cannot express or participate meaningfully in democratic governance. The Right to Information is, therefore, an intrinsic part of the fundamental right to freedom of expression specifically mentioned under Article 19(1)(a). It is not a new right conferred on the citizens. The essence of democracy is that each individual citizen is a sovereign in his/her own right. The Right to Information Act, therefore, needs to be understood as a tool of dialogue by each sovereign individual with the State.

It is the people of a country, who play key role in democratic process of the Government at every level. For them information means power, which is to be shared with fellow citizens. Participatory governance is envisaged by the Indian Constitution. If people of India were not given this right to information, their role in the political process of the country would have been negligible.

2.2 FRAMEWORK OF THE RTI ACT, 2005

The Right to information Act, 2005 (No. 22 of 2005) which came into enforcement from 12th October 2005 contains Preamble, 6 Chapters, 31 Sections and 2 Schedules.

Preamble

Preamble is the soul of any Act/Statute. It is the mirror to view the legislative framework of any law. The Preamble of the RTI Act, plays a very important role in interpreting the provisions of the statute. Just like the Preamble of the Constitution, the interpretative clause of the RTI assists in arriving at the objectives of the Act. The legislative intent of RTI is to create an informed citizenry, “to contain corruption and to hold Governments and their instrumentalities accountable to the governed”. Transparency ensures absence of arbitrariness and corruption.

By enacting the RTI, the Parliament of India aims to harmonise conflicting interests of public and bureaucracy by putting restrictions on the Right to Information under Section 8 of the RTI Act, which are in sync with Article 19(2) of the Constitution providing an inherent and inbuilt safeguard in the form of “reasonable restrictions”. The RTI law looks towards efficient operations of the government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information in national interest.

Extent & Commencement

Section 1 contains short title, extent and commencement. It states, “this Act may be called the Right to Information Act, 2005”. The Act came into operation w.e.f. 12-10-2005, after being passed by the Parliament on 12-05-2005. It received the assent of the President on 15-06-2005. It extends to the whole of India.

Important Terms

Section 2 of the Act is Definition Clause, which defines the meaning of the important terms used in the body of the text of the Act. Here, we will take up some selected ones-

Section 2(f) “Meaning of information”

Information means “any material in any form”, which exists with a public authority. The information has to exist in the material form, such as “records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data materials held in any electronic form”. Information also covers legal and other opinions received by the Public authorities. The list given in the section is only illustrative.

The RTI Act suggests an important principle regarding private bodies. “Information relating to any private body, which may not be covered by the definition of “Public Authority” [given in Section 2(h)], can be obtained through a Public Authority if the law allows the public authority to access it. For Example–

- Information about a private bank can be obtained from the Regulator – RBI – if the law requires the information to be filed.
- Information about a private unaided school – from the Education Department.
- Information about a Public Limited Company – from the Registrar of Companies or SEBI, if the law empowers them to ask for it.
- Information about a Cooperative Society – from the Registrar of Cooperative Societies.
- Information about Trusts – from the Charities Commissioner.
- Information about various banks, including private banks – from the Reserve Bank of India” (Shailesh & Prahalad, 2016).

Since inception of the Act, there has been controversy whether file noting should be covered within the purview of the Act? Even an amendment was proposed to take out file noting from the purview of the RTI Act, soon after the Act became operative. But succumbing to civil society pressure, a cabinet note was released on 23rd June, 2009, “...*file noting can be disclosed except file noting containing information exempt from disclosure under Section 8 of the Act*”. In *Dr RK Garg v. Ministry of Home Affairs*, it was held, “...*noting of a ‘confidential’ file should be disclosed only after giving opportunity to the third party, such as, the officer(s) writing those notes, to be heard*” (Appeal No. CIC/AT/A/2006/00363).

“The Public authority holds the information on behalf of citizens. All the information with the possession of Public authority is certainly information as per the RTI Act, available to any citizen under the Act subject to the exemptions of Sections 8 & 9”.

Section 2(i) *Meaning of “record”*

Record means “any record in any form available with public authority”. It covers “any document, manuscript and file; any microfilm, microfiche and facsimile copy of a document; any reproduction of image or images embodied in such microfilm (whether enlarged or not); and any other material produced by a computer or any other device”.

Section 2(j) *“Meaning of Right to Information”*

Right to Information means applicant’s “right to inspection of work, documents and records, taking notes, extracts or certified copies of documents or records, taking certified samples of material and obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored

in a computer or in any other device”. The information shall be provided subject to the provisions of Section 7(9).

Section 2(h) “Public Authority” means any authority or body or institution of self-government established or constituted —

- a) by or under the Constitution;
- b) by any other law made by Parliament;
- c) by any other law made by State Legislature;
- d) by notification issued or order made by the appropriate Government, and includes any—
 - i) body owned, controlled or substantially financed;
 - ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government”.

The term public authority has been defined very widely to include all governing structure, legislature and judiciary. It includes “any authority or body which is considered as Government, means all Ministries and their departments, Municipal Bodies and Panchayats. It will include Courts, UPSC, and Public Sector Undertakings like Nationalised Banks, LIC, UTI, Deemed Universities which are created by specific notifications are also public authorities as per sub clause (h) (d). Under sub-clause (d) (i) and (ii), aided schools and colleges are Public Authorities. If there are Government nominees on the boards of companies, or trusts or NGOs this is control by the Government”. It is worth noting that establishments of the Parliament, Legislatures, Judiciary, President and the Governors have also been brought under the surveillance of the citizen.

Section 2(e) “Competent Authority”

“It is the duty of competent authorities to ensure that the supply of information comes within the scope of their authority. Chief Justice of India is competent authority with respect to the Supreme Court. All Chief Justices of the High Courts are competent authorities in respect of all High Courts. Similarly the presiding officers of the respective legislative chambers of Parliament and State legislatures are competent authorities in relation to the particular legislative chambers they preside. For other public authorities both at the Centre and State level, the President of India, the respective Governors and the Union Territory administrators are the competent authorities within their respective spheres of governing authority” (Raj, 2011).

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) What is Information as per the RTI Act, 2005? Discuss the importance and meaning of the right to information.

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- 2) Define Public Authority and Competent Authority within the meaning of the RTI Act, 2005 with some illustrative cases.

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2.3 ELIGIBILITY FOR THE RIGHT TO INFORMATION

Section 3 makes clear eligibility for asserting right to information. It declares, “subject to the provisions of this Act, all citizens shall have the right to information”. This is the smallest section, but has great implications. It is the unfettered right of a citizen to get information from any public authority. The restrictions can only be placed on the conditions given in Sections 8 and 9.

2.4 OBLIGATIONS OF PUBLIC AUTHORITY

Section 4 of the Act puts an obligation on all public authorities to provide information to a citizen who seeks it unless the information sought comes under the exempted category. “Under the RTI Act, 2005, Public Authorities are required to make disclosures on various aspects of their structure and functioning. This includes: (i) disclosure on their organisations, functions, and structures, (ii) powers and duties of its officers and employees, and (iii) financial information. The intent of such suo moto disclosures is that the

public should need minimum recourse through the Act to obtain such information. If such information is not made available, citizens have the right to request for it from the Authorities. This may include information in the form of documents, files, or electronic records under the control of the Public Authority. The intent behind the enactment of the Act is to promote transparency and accountability in the working of Public Authorities” (PRIS India, 2019).

2.5 AUTHORITIES UNDER THE RTI ACT

Designation of PIOs & APIOs

Section 5 of the Act requires public authorities to designate as many Public Information Officers (PIOs) as may be necessary to provide information. They are to be assisted by Assistant Public Information Officers (APIOs). The public authority is also required to ensure that APIOs are designated at different sub divisional or sub district levels, for the purpose of receiving applications of RTI and forwarding it to the PIOs for necessary action.

Constitution of Central and One State Information Commission

Sections 12 & 15 of the Act makes provision for Central and State Information Commissions. Each Commission shall consist of one Chief Information Commissioner (CIC) and some Information Commissioners (ICs) not exceeding ten. These Commissioners are appointed by the President or the Governor as the case may be on the recommendations of the three member Committee consisting of the Prime Minister/Chief Minister, a Cabinet Minister nominated by the Prime Minister/Chief Minister and the leader of opposition from the House of People/Legislative Assembly. In the absence of the designated leader of opposition, the leader of the largest opposition group in the House shall be the third member of the Committee. The CIC or ICs can be removed only on the ground of proved misbehaviour or incapacity, which has been inquired into by the Supreme Court after the matter has been referred to it by the President/Governor as the case may be. “The entire information regime created under the Act is to work under their control or supervision only”.

Terms and Conditions of Service

The RTI Amendment Act, 2019 changes the terms and conditions of service of the Chief Information Commissioners (CIC) and Information Commissioners (ICs) at the Centre and in States by amending Section 13 and 16 of the RTI Act, 2005. Table 2.1 highlights the comparative provisions of the Act of 2005 and 2019.

Table 2.1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Act, 2019 w.e.f. 1st August 2019

Provision	The RTI Act, 2005	The RTI (Amendment) Act, 2019
S. 13 & S. 16 Term	The Chief Information Commissioner and Information Commissioners (at the central and state level) will hold office for a term of five years or up to the age of 65 years, whichever is earlier.	The Act removes this provision and states that the Central Government will notify the term of office for the CIC and the ICs.
Quantum of Salary	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the State Government, respectively.	The Act removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the Central Government.
Deductions in Salary	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Previous government service includes service under: (i) the Central Government, (ii) State Government, (iii) Corporation established under a Central or State Law, and (iv) Company owned or controlled by the Central or State Government.	The Act removes these provisions.

2.6 ENFORCEMENT OF RIGHT TO INFORMATION UNDER THE ACT

Here, we will discuss the process for obtaining information and disposal of requests. It is the right of every citizen to seek any information without disclosing his identity and reason for asking information. The Act has established a three-tier structure for enforcing the right to information

guaranteed under the Act. Public Authorities designate some of their officers as Public Information Officers.

Submission of Application

Any person who desires to obtain any information under the Act can make a request for the information under Section 6 of the Act without giving a reason for such a request or any personal details, except those that are necessary to contact him. This signifies that the Act does not prescribe any specific format of application for making a request under this Act. An application for RTI can be submitted either in writing or electronically in English, Hindi or in the official language of the area in which applicant resides. The application should accompany with requisite fee to the Central/State PIO or APIO [Section 6(1)], designated by the Public Authorities. These Officers are required to provide information to the RTI applicant within 30 days of the request and within 35 days if application is sent to APIO [Section 5(2)]. Proviso to Section 7(1) provides that information is to be given within 48 hours if right to life or liberty is involved. If any information is provided on additional charge, as the cost of providing that information, time taken for intimation and payment of fees is excluded from the above time frame [Section 7(3)(a)]. If no action is taken on application within stipulated time, the information is deemed as refused [Section 7(2)].

Provisions for Appeal

RTI regime constructs two tier mechanism for appeal. The first appeal goes, to an officer within the organisation who is senior in rank to the PIO. The first appeal must be disposed of within 30 days or such extended period not exceeding a total of 45 days from the date of filing. Second appeal lies to the State Information Commission or the Central Information Commission, as the case may be, against the first appellate authority [Section 19 (1) and (3)]. No time limit is specified in the Act for the disposal of second appeal. The Commission exercises powers of a civil court, as dealing with a civil suit under the Civil Procedure Code 1908.

Imposition of Penalty and Disciplinary Action against PIO

Section 20(1) of the Act provides that the Commission can impose penalties on erring PIO. A penalty of Rs. 250/- per day of delay, subject to the total amount of such delay not exceeding Rs. 25,000/-. Whereas under Section 20(2), in case of persistent failure to honour its decisions, disciplinary actions may be recommended against the concerned PIO by the Commission.

The CIC/SIC exercises its jurisdiction over all Central/State Public Authorities. It invites online quarterly returns from the Public Authorities (PAs) in a prescribed proforma [Section 25(3)], to fulfill its mandate of

preparation and forwarding of the Annual Report to the Appropriate Government. The State Government is “to compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act [Section 26 (2)]”. Guide is to be updated at regular intervals. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training publishes a guide, which facilitates all the stakeholders of right to information.

2.7 DISSEMINATION OF PROACTIVE DISCLOSURE

The scheme of Section 4(1) is such that at every level of administration, the requisite information shall be properly stored, indexed and computerised. Under *Section 4(1)(b) of the RTI Act, every public authority is required to upload information in the public domain within 120 days of the coming into force of the Act. The legislative objective is to discourage filing of individual applications by having a transparent governance.* In *Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors* (Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors., (2011) 8 SCC 497), it was held, “...to start with, all RTI queries and answers given (except where information relates to private matter) may be put in public domain”.

Third Party Information

Section 11 provides for third party information. Third party means a person other than the citizen making the application requesting information, and includes a public authority [Section 2(n)]. Section 11 lays down procedure and not an exemption. Section 7 (1) clearly states, “...request for information may be rejected for any of the reasons specified in Section 8 and 9”. Section 11 gives an opportunity to the third party to put his objections to disclosing information, which may be detrimental to his interests.

Section 11(a) provides, “Where a CPIO or a SPIO, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the CPIO or SPIO, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the CPIO or SPIO, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information”. Under Section 7(1), it is mandatory for the

PIO to give information within thirty days of the receipt of application. Thus, in case of third party information, deadline for providing information is extended up to forty days.

In *Bombay Stock Exchange v. SEBI* (CIC/SM/A/2011/001687), “it was held that RTI Act 2005 does not give automatic veto on disclosure of information pertaining to him, which may be held by a public authority”.

In another case of *K.K.Mahajan v. Office of Cantonment Board, Dagshai, H.P.* (CIC/AT/A/2006/00014), the CIC held, “a mere objection by a third party is not enough reason to embargo the disclosure of such information. The law requires the application of the CPIO and the appellate authority’s minds regarding the pros and cons of a proposed disclosure. On the basis of the facts of each case, in terms of the norms set out in the Act”.

“If third party is not satisfied with the decision of PIO for disclosure of information, he can appeal under Section 19 of the Act, in accordance with the provision of Section 11(4). Third party has another opportunity of second appeal to the Information Commission against the decision of the First appellate authority” (Shailesh & Prahalad, 2016).

2.8 EXEMPTION FROM DISCLOSURE OF INFORMATION

In the Act, there are certain exemption clauses, which deny the right to information to citizens.

2.8.1 Non-disclosure Clause

- 1) *Under Section 8(1) of the Act, ten categories of information are given, which cannot be disclosed. It provides that notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:*
 - a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
 - b) information, which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
 - c) information, the disclosure of which would cause a breach of privilege of the Parliament or the State Legislature;
 - d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority

is satisfied that larger public interest warrants the disclosure of such information;

- e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- f) information received in confidence from foreign Government;
- g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- h) information which would impede the process of investigation or apprehension or prosecution of offenders; and
- i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters, which come under the exemptions specified in this section shall not be disclosed;

- j) information, which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

- 2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a Public Authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
- 3) Subject to the provisions of clauses (a), (c) and (i) of Sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6, shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

2.8.2 Exemption under Second Schedule

First there is Second Schedule of the Act, which contains a list of 26 security and intelligence organisations established by the Central Government. The State Governments are also authorised to notify their own lists of such organisations. Any information relating to such organisations or any information provided by such organisations to the Government does not come within the purview of the RTI Act. The only exception is the information relating to violation of human rights or that relating to corruption.

2.8.3 Exemption under Section 9

Central/State PIOs has been empowered under section 9 of the Act “to reject a request of information, where such a request would involve an infringement of copyright subsisting in a person other than the State”.

2.9 OVERRIDING EFFECT OF THE RTI ACT FROM DISCLOSURE OF INFORMATION

Non-obstante clause of Section 22 of the RTI Act, provides, “*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act*”.

This clearly means that the RTI Act will prevail over all laws and rules, including the Official Secrets Act, 1923. It does not mean that the Official Secrets Act or other acts are repealed. When a request for information is filed under the RTI Act, it can be denied only if the provisions of the RTI Act provide for an exemption.

2.10 THE RTI ACT: RETROSPECTIVE EFFECT

One unique feature of the Act is that it is wholly retrospective in nature. It not only applies to information created or held by public authorities after Act of 2005 has come into force. It applies to all information held by public authorities regardless of its date.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Who can seek information under the RTI Act, 2005? Discuss procedure for obtaining information under the Act.

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- 2) What is proactive disclosure under the RTI Act, 2005? On what grounds information can be refused under the RTI Act, 2005?

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- 3) Explain third party information. Whether third party information can be disclosed, if yes, what is the procedure?

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2.11 APPRAISAL

The RTI Act, 2005 has facilitated information to be claimed as a matter of right. It has “empowered the individual citizen” and has paved a way towards “inclusive good governance” leading to the fulfilment of the “accountability principles” of the Preamble. The Act has helped people question every public institution and authority on the matters of public interest like demonetisation, non-performing assets, the Rafale fighter aircraft deal, electoral bonds, unemployment figures, appointment of the Central Vigilance Commissioner (CVC), etc. The RTI Act is a constant challenge to the governance.

2.12 CONCLUSION

Though the RTI Act of India is well acclaimed at international level in terms of its provisions, yet its rating for implementation and actual transparency is not up to the mark. This is mainly because of the apathetic attitude of authorities. There may be some conflict with the RTI and other public interests, which need to be harmonised as per our Constitution. Independent structures like RTI regime set up to regulate and monitor the government are vital to a democratic state committed to deliver justice and constitutional guarantees.

2.13 GLOSSARY

File Noting: File noting are written remarks recorded on a paper/file under consideration to facilitate its disposal. Notes are recorded by bureaucrats, ministers, etc. Hence, this becomes an important part of the information to understand the rationale for a particular decision/action.

SEBI: It refers to the Securities and Exchange Board of India (SEBI), which is a regulatory body for securities and commodity market under the jurisdiction of Ministry of Finance, Government of India. The board was established on 12th April 1992 in accordance with the provisions of the Securities and Exchange of Board of India Act, 1992.

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2.15 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - RTI is very important for good governance and having a corruption free society. Information means any material in any form. Refer to Section 2.2 of the Unit for the answer.
- 2) Your answer should include the following points:
 - Refer to Section 2.2 of the Unit for the answer.

Check Your Progress 2

- 1) Your answer should include the following points:
 - Any citizen of India even living abroad may seek information within the provisions of the RTI Act. There is no particular proforma for filing RTI application nor any reason is to be cited for asking information, only requisite fee is required. Refer to Section 2.3 to 2.6 of this Unit.

- 2) Your answer should include the following points:
- Refer to Section 2.7 and 2.8 of this Unit. You may also refer Unit 1 for limitations on the RTI.
- 3) Your answer should include the following points:
- Section 2(n) states that third party means a person other than the citizen making the application requesting information. Refer to Section 2.7 of this Unit along with the case law referred.



UNIT 3 THE RIGHT TO INFORMATION RULES*

Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Rule Making Power under the RTI Act, 2005
- 3.3 The Right to Information Rules, 2012
 - 3.3.1 Rules Regarding Fees under the Right to Information Rules, 2012
 - 3.3.2 Government of India: Initiatives for Effective Implementation of the RTI Rules, 2012
 - 3.3.3 Rules Regarding Appeal to the Commission under the RTI Rules, 2012
- 3.4 The Right to Information Rules, 2019
- 3.5 Online Portal for Filing RTI Application and First Appeal
- 3.6 Appraisal
- 3.7 Conclusion
- 3.8 Glossary
- 3.9 References
- 3.10 Answers to Check Your Progress Exercises

3.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the importance of rules for making a statute workable;
- Explain the background of Right to Information Rules, 2012;
- Describe the procedure for filing application and appeal for the right to information; and
- Explain how to file an online application or appeal for right to information.

3.1 INTRODUCTION

The Right to Information (RTI) Act, 2005 was enacted to bring good governance in the system. It enjoined every public authority to be transparent

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and accountable in his/her working. The basic objective of the RTI Act, 2005 is to empower the citizens to seek information from the government and its instrumentalities unless sought information falls in the exempted category. Open government make our democracy work for the people in real sense. The RTI regime is intended to provide access to the citizenry to all kinds of information relating to the governance of the country, which helps in useful political participation. A clear knowledge of the provisions of the Act and Rules to the Public Information Officers/First Appellate Authorities is key to the successful implementation of the Act. Rules are very important to carry out the provisions of any Act/Statute.

3.2 RULE MAKING POWER UNDER THE RTI ACT, 2005

In order to carry out the aims, objectives and functions of the RTI Act, the Central and State Governments are empowered to make Rules under the provisions of RTI Act, 2005. The Right to Information Rules are framed in pursuance of Section 27, 28 and 29 of the RTI Act, 2005. Section 27 of the Act “*gives power to the appropriate Government (Central or State) to frame rules. Primarily, rules can provide for application fees, additional fees for providing information, formats for RTI applications and appeals, for procedure to be adopted by the Central Information Commission or State Information Commission in deciding appeals or any other matter prescribed*”. Section 28 of Act gives authority only to the Competent Authorities to make rules for the fees payable under the Act, to charge additional fee for rendering information, to devise formats for application and appeal. *It is important to note that this power cannot be exercised by the public authorities.* Section 29 makes it mandatory for the governments to lay the rules before both the Houses of Parliament as soon as the rules are framed.

In order to give effect to the provisions of the RTI Act, 2005 before the framing of RTI Rules 2012, Rules Regarding Charging of Fee for Application of RTI, Central Information Commission (Appeal Procedure) Rules, 2005 and Central Information Commission (CIC) (Management) Regulations 2007 were framed. Let us first discuss, in brief, these regulations —

- ***The Right to Information (Regulation of Fee and Cost) Rules, 2005***

In exercise of the powers conferred by clauses (b) and (c) of sub-section (2) of Section 27 of the Right to Information Act, 2005 (22 of 2005), the Central Government made the first principal rule, “the Right to Information (Regulation of Fee and Cost) Rules, 2005), which became effective from 16th September, 2005. These Rules provided for the

application fee for seeking information, mode of fee payment and charges for the document inspection or for having a hard or soft document copy of the information sought. Rules 3 to 5 are given as hereunder —

3. A request for obtaining information under sub-section (1) of Section 6 shall be accompanied by an application fee of Rs. 10/- by way of cash against proper receipt or by demand draft or bankers cheque [or Indian Postal Order — inserted vide Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2006, w.e.f. 17-5-2006] payable to the Accounts officer of the Public Authority.
4. For providing the information under sub-section (1) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque [or Indian Postal Order — inserted vide Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2006, w.e.f. 17-5-2006] payable to the Accounts Officer of the Public Authority at the following rates:
 - a) Rs. 2/- for each page (in A-4 or A-3 size paper), created or copied;
 - b) actual charge or cost price of a copy in larger size paper;
 - c) actual cost or price for samples or models; and
 - d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof).
5. For providing the information under sub-section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque [or Indian Postal Order — inserted vide Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2006, w.e.f. 17-5-2006] payable to the Accounts officer of the Public Authority at the following rates:
 - a) for information provided in diskette or floppy – Rs. 50/- per diskette or floppy; and
 - b) for information provided in printed form at the price fixed for such publication or Rs. 2 per page of photocopy for extracts from the publication.

- ***Central Information Commission (Appeal Procedure) Rules, 2005***

In exercise of the powers conferred by clauses (e) and (f) of sub-section (2) of Section 27 of the Right to Information Act, 2005 (22 of 2005), the Central Government passed Central Information Commission (Appeal Procedure) Rules, 2005, which came into application w.e.f. 28-10-2005. These Rules provided for contents of appeal having particulars of the appellant and details of the relief sought. Documents to accompany appeal were to be self-attested by the appellant. Rules also provided for

procedure in deciding appeal, service of notice by the Commission. The Order of the Commission was to be pronounced in open proceedings and be in writing duly authenticated by the Registrar or any other officer authorised by the Commission. The Appellant or complainant was to be present during appeal proceedings or through his authorised representative.

- ***Central Information Commission (CIC) (Management) Regulations, 2007***

CIC (Management) Regulations, 2007 were introduced for the smooth functioning of the CIC as there were no provisions in the RTI Act, 2005 with regard to the powers and functions of the CIC on how to deal with appeals and complaints. These regulations were, however, quashed by the Delhi High Court in 2010, which ruled that the CIC had no power to make Regulations under Section 12(4) of the RTI Act, 2005. But some High Courts, including Patna High Court, have approved the Regulations framed by their respective State Information Commissions. The CIC challenged the decision of the Delhi High Court in the Supreme Court.

3.3 RIGHT TO INFORMATION RULES, 2012

In exercise of the powers under Sections 27 and 28 of the RTI Act, 2005, the Central Government, State Governments, High Courts, etc. had notified rules. Under these rules, the fee prescribed by different appropriate Governments/Competent Authorities were at great variance.

1. While RTI Rules 2012 were being framed, a notification was issued by the Government of India to “the Chief Secretaries of all States/UTs (except J&K), Registrars of all High Courts and to the Registrar of the Supreme Court on 26th April 2011 for the harmonisation of fee payable under the Right to Information Act, 2005, which read as—

Sections 27 and 28 of the Right to Information Act, 2005 empower the appropriate Governments and the Competent Authorities to make rules to prescribe, inter-alia, the fees payable under the Act. In exercise of these powers, the Central Government, State Governments, High Courts, etc. have notified rules. It has been observed that the fee prescribed by different appropriate Governments/Competent Authorities is at great variance.

2. The Second Administrative Reforms Commission has, in this regard, recommended that the States should frame Rules regarding application fee in harmony with the Central Rules and ensure that the fee should not become a disincentive for using the right to information.
3. All the States/Competent Authorities are, therefore, requested to kindly review their Fee Rules and to prescribe fee in consonance with the fee prescribed by the Government of India” (N0.F. 1/5/2011 -IR ,Dt 26 April

2011, Department of Personnel and Training, Ministry of Personnel, PG and Pension, Government of India, New Delhi).

A copy of the “Right to Information (Regulation of Fee and Cost) Rules, 2005 notified by the Government of India” was “enclosed for ready reference” and information was also sought for the action taken in this regard.

Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training (DOPT) issued a “Notification in supersession of the Central Information Commission (Appeal Procedure) Rules, 2005 and the Right to Information (Regulation of Fee and Cost) Rules, 2005” in order to provide rules and procedures for efficient and smooth conduct of RTI machinery. The Right to Information Rules, 2012 (G.S.R.603(E) NOTIFICATION Dt. 31st July, 2012) mainly deal with (A) rules relating to fees for filing a RTI petition, and (B) appeals to the Commission. These rules also aim at reducing the number of appeals and complaints to the CIC. These became effective from 31st July, 2012.

3.3.1 Rules Regarding Fees Under the Right to Information Rules, 2012

Rules 3 to 6 of RTI Rules, 2012 pertain to provisions regarding fee as prescribed by the Central Government. Provisions relate to RTI application fee, fees for providing information, mode of payment of fee and exemption from payment of fee. Details are as follows:

Rule 3. Application Fee — An application under sub-section (1) of Section 6 of the Act shall be accompanied by a fee of rupees ten and shall ordinarily not contain more than five hundred words, excluding annexures, containing address of the Central Public Information Officer and that of the applicant: Provided that no application shall be rejected only on the ground that it contains more than five hundred words.

Rule 4. Fees for providing information — Fees for providing information under sub-section (4) of Section 4 and Sub-sections (1) and (5) of Section 7 of the Act shall be charged at the following rates, namely:

- a) rupees two for each page in A-3 or smaller size paper;
- b) actual cost or price of a photocopy in large size paper;
- c) actual cost or price for samples or models;
- d) rupees fifty per diskette or floppy;
- e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication;
- f) no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hour or fraction thereof; and

- g) so much of postal charges involved in supply of information that exceeds fifty rupees.

Rule 5. Exemption from Payment of Fee — No fee under Rule 3 and Rule 4 shall be charged from any person who, is below poverty line provided a copy of the certificate issued by the appropriate Government in this regard is submitted along with the application.

Rule 6. Mode of Payment of fee — Fees under these Rules may be paid in any of the following manner, namely:

- a) in cash, to the public authority or to the Central Assistant Public Information Officer of the public authority, as the case may be, against a proper receipt; or
- b) by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority; or
- c) by electronic means to the Accounts Officer of the public authority, if facility for receiving fees through electronic means is available with the public authority.

3.3.2 **Government of India: Initiatives for Effective Implementation of the RTI Rules, 2012**

- **Harmonisation of the RTI (Fee & Cost) Rules and Appeal Procedure Rules under the Right to Information Act, 2005**

- 1) The Government of India had notified a set of the RTI Rules, 2012 dated 31st July 2012. While drafting the RTI Rules, 2012, it was stipulated that once notified, the State Governments would be requested to adopt these rules *mutatis mutandis*, so that there will be uniformity, as far as possible, in the matter of implementation of the Act in the country.
- 2) Attention is also invited to this Department's letter of even number dated 26.4.2011 titled harmonisation of fee payable under the Right to Information Act requesting thereby to review the State/Supreme Court/High Court RTI Fee & Cost Rules and to prescribe fee in consonance with the fee prescribed by the Government of India as per the Right to Information (Regulation of Fee and Cost) Rules, 2005, so that the fee should not become disincentive for using the Right to Information. It has been observed that few States have not yet harmonised their fee rules with that of the Central Government.
- 3) All the States/Competent Authorities are, therefore requested to kindly review their Right to Information (Fee & Cost Rules) and Appeal Procedure Rules and to notify, if need be, fresh rules in consonance with those notified by the Government of India.

- **Timely intimation about payment of additional fee under the RTI Act, 2005**

- 1) It has been brought to the notice of the Central Information Commission that some CPIOs inform the information seeker about the additional fee under Sub-section 7(3) of the RTI Act at the end of the thirty days period prescribed for providing the information under sub-section 7(1) of the RTI Act.
- 2) The Central Information Commission in one of its orders has mentioned that while there cannot be any hard and fast rule about when exactly the intimation about the photocopying charges should be conveyed to the information seeker, it is implied in the prescribed time limit that the demand for the photocopying charges must be made soon after the RTI application is received so that the information seeker has time to deposit the fees and receive the information within the prescribed thirty days period. If the information sought is not voluminous or is not dispersed over a large number of files, computation of the photocopying charges should not be a time consuming task. As soon as the RTI application is received, the holder of the information should decide about how much information to disclose and then calculate the photocopying charges so that the CPIO can immediately write to the information seeker demanding such fees.
- 3) This may be brought to the notice of all concerned for compliance”.

- **Launching of Electronic Indian Postal Order**

- 1) On the initiative of the Department of Personnel and Training, the Department of Posts has launched *Electronic Indian Postal Order* (eIPO) w.e.f. 22/03/2013. This service provides a facility to obtain an ‘Indian Postal Order’ electronically by paying a prescribed fee online through e-Post Office Portal i.e. <http://www.epostoffice.gov.in>. It can also be accessed through India Post website www.indiapost.gov.in. The RTI Rules, 2012, provides for online fees submission, if facility is available with the public authority to take fees through electronic mode.
- 2) This facility is only being given to Indians Citizens living abroad, so that they may get information under the RTI Act, 2005, from the Central Public Information Officers (CPIOs), eIPOs can be purchased through ‘Debit and Credit cards’.
- 3) Detailed information for submitting application/appeal is given on online portal of ‘rtionline.gov.in’. Applicants/Appellants can get themselves registered at the website, by selecting concerned Ministry/Department from where information is sought. After registration and submission of requisite fee (if applicable), an eIPO is generated, that can be used for the information from the concerned Ministry/Department. If RTI application

is to be filed online, a printout of eIPO needs to be attached with the application/appeal.

- 4) It is to be noted that this “procedure is only for purchasing an Indian Postal Order electronically”. All other requirements for filing application as well as other provisions regarding eligibility, time limit, exemptions, etc. will remain the same as per the RTI Act, 2005.
- 5) An eIPO so generated can be used only once, as “CPIOs shall maintain a record of the eIPOs received from Indian Citizens living abroad”. The “details of eIPOs can be verified from the portal of India Post” (DoPT, 2013).

• **Extension of Facility of eIPO to Indian Citizens Abroad**

- 1) “A service called eIPO was launched w.e.f. 22-03-2013 to facilitate Indian citizens abroad across the globe to, purchase, an eIPO by paying the fee online to access the information under the RTI Act, 2005 from the Central Public Authorities.
- 2) The procedure to obtain eIPO has already been explained vide Office Memorandum of DoPT Dt 22-03-2013. The main points of procedure are as under:
 - [a] The user needs to get herself/himself registered at either <http://www.epostoffice.gov.in> or www.indiapost.gov.in.
 - [b] S/he has to select the Ministry/Department from whom s/he desires to seek the information under the RTI Act and the eIPO so generated, by making payment using the Debit or Credit card, can be used to seek information from that Ministry/Department only.
 - [c] A printout of the eIPO is required to be attached with the RTI application. If the RTI application is being filed electronically, eIPO, is required to be attached as an attachment.
 - [d] This facility is only for purchasing an Indian Postal Order electronically. All the requirements for filing an RTI application as well as other provisions regarding eligibility, time limit, exemptions, etc. as provided in the RTI Act, 2005 will continue to apply.
- 3) It has been brought to the notice of this Department that Indian citizens living abroad are facing difficulties in payment of fees for accessing information from Indian Missions/Posts abroad as the facility of eIPO was not available with them,
- 4) In order to facilitate for obtaining the information under the RTI Act, 2005 by the Indian citizen living abroad from Indian Missions/Posts under the Ministry of External Affairs, the facility of eIPO is extended to 176 Indian Missions/Posts”. List of Indian Missions/Posts were enclosed and this was to be brought to the notice of all concerned (eIPO, 2013).

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Discuss the rule making power of the government under the Right to Information Act, 2005.

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- 2) For what purpose Rules can be framed under the Right to Information Act, 2005? Highlight the Rules covering fees and cost of filing applications and appeals for the right to information.

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- 3) What measures have been taken by the Government of India for making the RTI Rules, 2012 more effective?

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3.3.3 Rules Regarding Appeal to the Commission under the RTI Rules, 2012

Provisions regarding appeal are enacted under Section 19 of the RTI Act, 2005. An appeal can be filed to the Central Information Commission/State Information Commission against the first Appellate Authority and to the first Appellate Authority against Central Public Information Officer (CPIO)/State Public Information Officer (SPIO) as the case may be, within specified time limit (See Unit 2 of Block 2 for details). Rules 8 to 15 of the RTI Rules, 2012 lay down detailed procedure for filing appeal to the Commission. A format of Appeal is also attached in the APPENDIX of the RTI Rules, 2012 to facilitate

the aggrieved persons to file appeal against the first appellate authority. The appellant should give details on the points given in the Appendix.

Appeal to the Commission: Rule 8 provides that a person who is “...aggrieved by an order of the First Appellate Authority” or by “non-disposal of his appeal” by the First Appellate Authority, may file an appeal to the Commission in the format given in the Appendix. The appeal shall be accompanied by the following documents, duly authenticated and verified by the appellant–

- i) a copy of the application submitted to the Central Public Information Officer;
- ii) a copy of the reply received, if any, from the Central Public Information Officer;
- iii) a copy of the appeal made to the First Appellate Authority;
- iv) a copy of the Order received, if any, from the First Appellate Authority;
- v) copies of other documents relied upon by the appellant and referred to in his appeal; and
- vi) an index of the documents referred to in the appeal.

Return of Appeal: Rule 9 states, “An appeal may be returned to the appellant, if it is not accompanied by the documents as specified in Rule 8”. The appeal may be filed again “after removing the deficiencies”.

Process of Appeal: Rule 10 provides for the procedure of appeal. According to the Clause (1), “...if on receipt of an appeal the Commission is not satisfied that it is a fit case to proceed with, it may dismiss the appeal, after giving an opportunity to the appellant of being heard”. The reasons are to be recorded for dismissing the appeal. Proviso to Rule 10 states, “no appeal shall be dismissed only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in Rule 8”.

Clause (2) of Rule 10 stipulates that the Commission shall not consider an appeal unless all the remedies have been exhausted by the appellant available under the Act.

Clause (3) specifies, “a person shall be deemed to have exhausted all the remedies available under the Act “if he had filed an appeal before the First Appellate Authority and the First Appellate Authority or any other person competent to pass order on such appeal had made a final order on the appeal” or “where no final order has been made by the First Appellate Authority with regard to the appeal and a period of forty five days has elapsed from the date on which such appeal was filed”.

Procedure for deciding appeals is given under Rule 11. The Commission, while deciding an appeal may “(i) receive an oral or written evidence on oath or on affidavit from the concerned or interested person (ii) peruse or inspect documents, public records or copies thereof (iii) inquire further details or facts through an authorised officer (iv) hear Central Public Information Officer, Central Assistant Public Information Officer or the First Appellate Authority or such person, against whose action the appeal is preferred (v) hear third party and (vi) receive evidence on affidavits from the Central Public Information Officer, Central Assistant Public Information Officer, First Appellate Authority and such other person against whom the appeal lies or the third party”.

Presence of the appellant before the Commission: Rule 12

The Commission shall inform the appellant about the “date of presence at least seven clear days before the date of hearing”. “The appellant may be present in person or through his duly authorised representative or through video conferencing, if the facility of video conferencing is available, at the time of hearing of the appeal by the Commission”. If the Commission is satisfied that the appellant is not able to attend the hearing, then, the Commission may afford the appellant another opportunity of being heard before a final decision is taken. The “Commission may take any other appropriate action”, if it deems fit.

Presentation by the Public Authority: As per Rule 13 “the public authority may authorise any representative on his behalf to present its case”.

Service of Notice by the Commission: Rule 14 provides, “...the Commission may issue the notice by name, which shall be served (i) by the party itself (ii) by hand delivery (dasti) through Process Server (iii) by registered post with acknowledgement due or (iv) by electronic mail in case electronic address is available”.

Order of the Commission: As per Rule 15 “...the order of the Commission shall be given in writing and issued under the seal of the Commission, duly authenticated by the Registrar or any other officer authorised by the Commission for this purpose”.

Appendix attached with the Rule contains Format of Appeal (See Rule 8). The proforma requires following details –

- 1) Name and address of the appellant.
- 2) Name and address of the Central Public Information Officer, to whom the application was addressed.
- 3) Name and address of the Central Public Information Officer, who gave reply to the application.

- 4) Name and address of the First Appellate Authority who decided the First Appeal.
- 5) Particulars of the application.
- 6) Particulars of the order(s) including number, if any, against which the appeal is preferred.
- 7) Brief facts leading to the appeal.
- 8) Prayer or relief sought.
- 9) Grounds for the prayer or relief.
- 10) Any other information relevant to the appeal.
- 11) Verification/authentication by the appellant.

3.4 THE RIGHT TO INFORMATION RULES, 2019

The Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, Central Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules, 2019” were made in pursuance of the RTI (Amendment) Act, 2019. The rules are of administrative nature and pertain to the internal administration of the concerned organisation only.

‘The Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules, 2019 were made in pursuance of the RTI (Amendment) Act, 2019. In a press release, the Government stated, “The rules are of administrative nature and pertain to the internal administration of the concerned organisation only. These Rules do not in any way affect the citizens’ Right to Information or obligations of Public Authorities and Public Information Officers given in Chapter II of the RTI Act inter-alia. The powers and functions of the Information Commissions stay undiluted as the relevant provisions under Chapter V of the Act remain unaltered. Nor are the independence and autonomy of these institutions affected in any way” (G.S.R. 810E Dt. 24 October 2019. Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Govt of India, New Delhi: <https://pib.gov.in/PressReleasePage.aspx?PRID=1595927>).

3.5 ONLINE PORTAL FOR FILING RTI APPLICATION AND FIRST APPEAL

An online portal <https://rtionline.gov.in/> has been launched by the Government of India for filing RTI Application and First Appeal along with payment gateway by Indian citizen for all Ministries/Departments and other public authorities of the Central Government. Online RTI Application or First Appeal, should not be filed for public authorities of State Government including Government of NCT Delhi. If filed, application would be returned, without refund of amount. A user manual is available on the website.

According to the RTI Rules, 2012 “no fees is required to be paid by any citizen who is below poverty line”. If a citizen belongs to BPL category s/he has to upload BPL card certificate in supporting document filed. If a citizen belongs to Non BPL category, s/he will make a payment of Rs.10 as prescribed in the RTI Rules, 2012.

Online Payment mode can be:

- 1) Internet Banking
- 2) Credit or Debit Card / RuPay Card

The requisite fee can be paid through “Internet banking through SBI and its associated banks” or by “using credit/debit card”.

3.6 APPRAISAL

The working of the RTI Act 2005 has shown that the RTI Rules 2012 are incomplete as they do not cover many things like rules regarding safety of the person seeking information, eligibility criterion for Information Commissioner, Central Public Information Officer, First Appellate Authority, rules regarding non-compliance of the RTI, etc. It has been noticed that the fee prescribed by the Central and State Government Authorities are different. Rules framed by the High Courts and Legislative Assemblies are often not in accordance with the RTI Act. Rules relating to exemptions, compelling citizen to disclose reasons for seeking information, giving id proofs or lowering the penalty are beyond the provisions of the RTI Act and also beyond the competence of subordinate legislation (Rule making powers) conferred by Section 28.

After the inception of the RTI Act, 2005, many clarifications have been issued by the DoPT regarding various provisions of the Act. To facilitate the citizens, “a compendium of Office Memorandums (OMs) and Notifications” has also been uploaded online. “Topic wise search facility is also available” (<https://dopt.gov.in/rti/proactive-disclosures/compendium-oms-notifications->

rti-act). This would further help applicants/appellants in developing the understanding of provisions of the RTI Act and the Rules thereof.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Discuss the provisions for making appeal under the RTI Act, 2005 and highlight the rules governing filing of appeal as given under the RTI Rules, 2012.

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- 2) Draft an appeal against the State Public Information Officer for not providing information within specified time limit.

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- 3) Discuss the provisions for filing an application/appeal online.

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3.7 CONCLUSION

There seems to be inbuilt deliberate legislative lapses as far as Rules framed by the Competent Authorities are concerned, as there is no provision to place such Rules on the floor of legislature. If all the competent authorities frame similar Rules, it would be convenient for the information seekers and would bring more clarity in legislation. All these shortcomings emphasise that changes were necessary to increase the effectiveness of the RTI Rules, 2012. Though, on 31st March 2017, the Ministry of Personnel, Public Grievances

and Pensions, Department of Personnel and Training (DoPT) proposed Right to Information Rules, 2017 to correct the inadequacies of the Central Information Commission Management Rules, 2007 and RTI Rules of 2012 by the Central Government under Section 27 of the Right to Information Act, 2005. Though the proposed Rules of 2017 were much more exhaustive regarding provisions of appeal, covering format for filing non-compliance application, format of complaint along with format of appeal, but unfortunately could not see the light of the day. Amendment of 2019 is of administrative concern only. If the RTI Rules, 2012 are duly modified addressing all the concerns mentioned above, it would go a long way in further strengthening the RTI regime.

3.8 GLOSSARY

Mutatis Mutandis: It is a Medieval Latin phrase meaning “with things changed that should be changed” or “having changed what needs to be changed” or “once the necessary changes have been made”. It remains unnaturalised in English and is therefore usually italicised in writing. It is used in many countries to acknowledge that a comparison being made requires certain obvious alterations, which are left unstated. *Mutatis mutandis* is still used in law and in other subjects of economics, mathematics, linguistics and philosophy.

3.9 REFERENCES

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3.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Discuss Sections 27, 28 and 29 of the RTI Act, 2005 and refer to point 3.2 of this Unit.
- 2) Your answer should include the following points:
 - See Rules 3 to 6 of the RTI Rules, 2012 and refer to Point 3.3 of this Unit.
- 3) Your answer should include the following points:
 - Refer to Point 3.3 (A) of the Unit.

Check Your Progress 2

- 1) Your answer should include the following points:

- Write your answer with the help of Section 19 of the RTI Act, 2005 and Rules 8 to 15 of the RTI Rules, 2012. Refer to Point 3.3(B) of the Unit too.
- 2) Your answer should include the following points:
- Draft your appeal with the help of proforma of appeal given in RTI Rules, 2012.
- 3) Your answer should include the following points:
- Refer to point 3.4 of this Unit and visit <https://rtionline.gov.in/> for more details regarding online application for the RTI.



UNIT 4 THE CENTRAL INFORMATION COMMISSION*

Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 The Central Information Commission
- 4.3 Term of Office and Conditions of Service
 - 4.3.1 Before the RTI (Amendment) Act, 2019
 - 4.3.2 After the RTI (Amendment) Act, 2019
 - 4.3.3 Removal of the CIC or IC
 - 4.3.4 Suspension of the CIC or IC
- 4.4 The CIC: Powers and Functions
 - 4.4.1 Power to Receive and Inquire into Complaint
 - 4.4.2 Appellate Jurisdiction of the Commission
 - 4.4.3 Power to Impose Penalty
 - 4.4.4 Power of Monitoring and Reporting
- 4.5 Landmark Judgments of the CIC
- 4.6 Conclusion
- 4.7 Glossary
- 4.8 References
- 4.9 Answers to Check Your Progress Exercises

4.0 OBJECTIVES

After studying this Unit, you should be able to:

- Explain the structure of CIC;
- Describe the procedure and working of CIC and its officials;
- Analyse the functions and powers of the CIC; and
- Examine the leading cases decided by the CIC, effecting governance.

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4.1 INTRODUCTION

The new millennium promises to be an era of good governance ensuring transparency and accountability on the part of the government, its instrumentalities and all sections of society concerned with public life. These trends have been further stimulated by the growth of information technology, enhanced globalisation and interdependency of national economies. Freedom of information has many advantages. It facilitates participation of people in public affairs by having access to relevant information. In an informed society, people can make better choices; and exercise their democratic rights. Right to Information (RTI) improves decision-making power of elected representatives as they have better understanding of needs of their citizenry. It enhances their credibility too. The legislative intent behind the enactment of the RTI Act is to foster transparency and accountability in the working of every Public Authority, bridge the gap between the information provider and the information seeker, enhance efficiency in administration of public authorities, mitigate corruption and promote good governance. Besides, the Act is a means of livelihood for those who are living in poverty or in a situation of powerlessness.

The object and reasons clause of RTI Act “*provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority*”. One of the important objects of the Act is “establishment of appellate machinery” of the Central Information Commission (CIC) and State Information Commission (SIC) to monitor and review the decisions of public information officers. In this Unit we will discuss constitution, powers and functions of the CIC in detail. Here, some landmark decisions of the CIC will also be discussed, which have been instrumental in the efficient working of the RTI Act, 2005.

4.2 THE CENTRAL INFORMATION COMMISSION

The Central Information Commission constituted under sub-section (1) of Section 12 (Section 2(b) of RTI Act, 2005) of the RTI Act, 2005. The CIC was established in October 2005 through the Central Government Notification in the Official Gazette. Sections 13 and 14 provide for the terms and conditions of service of the Chief Information Commissioner and Information Commissioners. Powers and functions of the CIC, including power to receive appeals and impose penalty are discussed under Sections 18 - 20 of the Act. Besides, the Commission is also entrusted with the duty of monitoring the functions of public authorities and sending report to the

Parliament about the implementation of the provisions of the Act. It may also render recommendations regarding efficient working of the Act.

Constitution of the Central Information Commission

Section 12 (1) of the RTI Act, 2005 provides that the Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, under this Act. Sub-section (2) states that the Central Information Commission shall consist of the Chief Information Commissioner and such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary. As per Section 2 (d) “Chief Information Commissioner” and “Information Commissioner” mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12.

Appointment of the Chief Information Commissioner and Other Members

Section 12(3) provides that the Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee. The appointment Committee shall consist of *three* persons—

- i) the Prime Minister, who shall be the Chairperson of the Committee;
- ii) the Leader of Opposition in the Lok Sabha; and
- iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation to sub-section (3) of Section 12 makes it clear that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

The CIC: Superintendence, Direction and Management

Sub-section (4) of Section 12 states that the general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner, who shall be assisted by other Information Commissioners. The Chief Information Commissioner may exercise all such powers and can do all such acts and things, which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

Qualifications for Appointment of the CIC and other Members

Sub-section 5 of Section 12 lays down qualifications for the appointment of Chief Information Commissioner and other members. It states that all the

members of CIC including Chief Information Commissioner shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

Sub-section (6) makes it mandatory that the Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, nor they will hold any other office of profit. It is further required that members of the Commission will not be connected with any political party or carrying on any business or pursuing any profession.

Headquarters of the CIC

As per Section 12 (7), the headquarters of the Central Information Commission shall be at Delhi. The Central Information Commission may, establish offices at other places in India too, with the prior approval of the Central Government.

Decision of the Government of India Regarding Constitution of Benches

On 22nd May 2005, the Government of India issued office memorandum (O.M.) regarding clarification on constitution of Benches by the CIC for the purpose of hearing applications and appeals of the RTI. It stated that it has been observed, “the Central Information Commission... taking decisions on the complaints and the appeals by constituting Benches. ...the Central Information Commission ...could function through Benches only if there was a specific provision in the Act regarding constitution of Benches...provision of Section 12(4) of the RTI Act does not empower the Chief Information Commissioner to constitute the Benches. Hence, it is advised that decisions on the complaints and appeals should be taken by the Central Information Commission as defined in Section 2(b) of the RTI Act, 2005 and not by the Benches of the Commission” (Department of Personnel and Training, Clarification on constitution of Bench by Central Information Commission (CIC). No. 1/1/2009-IR, Dt 22 May 2009).

4.3 TERM OF OFFICE AND CONDITIONS OF SERVICE

4.3.1 Before the RTI (Amendment) Act, 2019

Section 13 of the Act provides for the term of office and conditions of service of the Chief Information Commissioner and Information Commissioners. Section 13(1) and (2) provide, inter alia, that the Chief Information Commissioner and every Information Commissioner shall hold office for a

term of five years or till they attain the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment.

Proviso to Section 13(2) states that every Information Commissioner, on vacating his office under this sub-section, shall be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12. It is further stated that where the Information Commissioner is appointed as the Chief Information Commissioner, his/her term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

Sub-section (3) provides that before entering upon the office, the Chief Information Commissioner or an Information Commissioner shall take oath before the President or some other person appointed by him/her in that behalf. Oath shall be taken on the proforma given in the First Schedule.

Sub-section (4) of Section 13 provides that the Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under Section 14.

Salaries and allowances payable to and other terms and conditions of service of the CIC and ICs

Sub-section (5) of Section 13 clarifies that the salaries and allowances and other terms and conditions of service of the Chief Information Commissioner and Information Commissioners shall be the same as that of the Chief Election Commissioner and Election Commissioner, respectively.

Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his/her appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension, which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner, at the time of his/her appointment, is in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his/her salary in respect of the service as the Chief

Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

Under sub-section (6), the Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

4.3.2 After the RTI (Amendment) Act, 2019

The RTI Amendment Act, 2019 changed the terms and conditions of service of the Chief Information Commissioners (CIC) and Information Commissioners (ICs) at the Centre and in States by amending Section 13 of the RTI Act, 2005. Table 4.1 below shows the comparative provisions of the Act of 2005 and 2019.

Table 4.1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Act, 2019 w.e.f. 1st August 2019

Provision	The RTI Act, 2005	The RTI (Amendment) Act, 2019
S. 13 Term	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) at the central level will hold office for a term of five years or up to the age of 65 years, whichever is earlier.	The Act removes this provision and states that the Central government will notify the terms of office for the CIC and the ICs.
Quantum of Salary	The salary of the CIC and ICs will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively.	The Act removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the Central Government.

Deductions in Salary	The Act states that at the time of appointment of the CIC and ICs if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension [Previous government service includes service under: (i) the Central government, and (ii) State government].	The Act removes these provisions.
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Justification given by the Government in Statement of Objects and Reasons of the RTI (Amendment) Bill, 2019

“The functions being carried out by the Election Commission of India and the Central and State Information Commissions are totally different. The Election Commission is a constitutional body established by Clause (1) of Article 324 of the Constitution and is responsible for the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice-President held under the Constitution. On the other hand, the Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the Right to Information Act, 2005. Therefore, the mandate of Election Commission of India and Central and State Information Commissions are different. Hence, their status and service conditions need to be rationalised accordingly” [RTI Amendment Bill, (Bill No. 181 of 2019) as introduced in the Lok Sabha on 15 July 2019].

Right to Information Rules 2019

The Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules, 2019 was made in pursuance of the RTI (Amendment) Act, 2019. In a press release, the Government stated, “The rules are of administrative nature and pertain to the internal administration of the concerned organisation only. These Rules do not in any way affect the citizens’ Right to Information or obligations of Public Authorities and Public Information Officers given in Chapter II of the RTI Act inter-alia. The powers and functions of the Information Commissions stay undiluted as the relevant provisions under Chapter V of the Act remain unaltered. Nor are the independence and autonomy of these institutions

affected in any way” (G.S.R. 810E Dt. 24 October 2019 Ministry of Personnel, Public Grievances and Pensions, <https://pib.gov.in/PressReleasePage.aspx?PRID=1595927>).

4.3.3 Removal of the CIC or IC

Section 14 (1) provides, subject to the provisions of sub-section (3), “the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of *proved misbehaviour or incapacity* after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed”.

Sub-section (3) states, “Notwithstanding anything contained in Sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner, or a Information Commissioner, as the case may be—

- a) is adjudged an insolvent; or
- b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
- c) engages during his term of office in any paid employment outside the duties of his office; or
- d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner”.

It is not out of place to mention here, “if Chief Information Commissioner or Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall be deemed to be guilty of misbehaviour” [Section 14(4)].

4.3.4 Suspension of the CIC or IC

The power has been conferred upon President of India by *Section 14(2)* “to suspend from office and if deemed necessary also to prohibit from attending the office during the inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court [regarding misbehaviour or incapacity under sub-section

(1)] until the President has passed orders on receipt of the report of the Supreme Court on such reference”. However, during suspension of such Commissioner, s/he shall be entitled to the pay and allowances, i.e., subsistence allowance as allowed to a Government servant during the period of suspension subject to final order to be passed after the inquiry.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Write a note on the constitution of Central Information Commission.

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2) Discuss the terms and conditions of service of the members of Central Information Commission. What changes have been brought by the RTI (Amendment) Act of 2019?

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3) Enumerate provisions regarding removal and suspension of the members of Central Information Commission.

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4.4 THE CIC: POWERS AND FUNCTIONS

Chapter V of the RTI Act, 2005, Sections 18-20 describe the power and functions of the CIC, its right to receive appeals and impose penalties. Chapter VI, Section 25 provides for monitoring of all Central Public Authorities by the CIC and reporting about implementation of the provisions

of Act before the Parliament. Now, let us discuss in detail powers and functions of the CIC—

4.4.1 Power to Receive and Inquire into Complaint

Section 18 (1) empowers the CIC to receive and inquire into a complaint from any person in the following circumstances:

- a) When an appellant is unable to submit his/her RTI application since no PIO or APIO are appointed, or they refuse to take the RTI application.
- b) When information is denied by the PIO.
- c) When information has not been provided in the time limit provided.
- d) Where fee in excess of that specified in the rules is being charged.
- e) When an appellant has been given incomplete, misleading or false information.
- f) In any other matter like noncompliance of Section 4.

Under sub-section (2), where the Central Information Commission is satisfied that there are reasonable grounds to inquire into the matter; it may initiate an inquiry in respect thereof.

Powers of a Civil Court

Sub-section (3) confers the powers of a civil court. It states that while inquiring into any matter under this Section, the Central Information Commission shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- a) Summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce the documents or things;
- b) requiring the discovery and inspection of documents;
- c) receiving evidence on affidavit;
- d) requisitioning any public record or copies thereof from any court or office;
- e) issuing summons for examination of witnesses or documents; and
- f) any other matter, which may be prescribed.

Access to Records

Sub-section (4) states that, notwithstanding anything inconsistent contained in any other Act of Parliament, during the inquiry of any complaint under this Act, the Central Information Commission may examine any record to

which this Act applies, which is under the control of the public authority, and no such record may be withheld from it on any grounds. This clearly lays down that no record can be denied to the Commission.

4.4.2 Appellate Jurisdiction of the Commission

The RTI regime constructs two tier mechanisms for appeal. Section 19 bestows the power of entertaining appeal to the Commission. The Central Information Commission (Appeal Procedure) Rules, were notified in 2005. These Rules contain contents of appeal, documents to be attached with appeal and procedure in deciding appeal. Section 19 (1) provides that any person who does not receive a decision within the time specified or is aggrieved by a decision of the Central Public Information Officer, may prefer first appeal, within *thirty days* from the expiry of such period or from the receipt of such a decision, to such officer *who is senior in rank* to the Central Public Information Officer. Proviso to Section 19 (1) states that such officer may admit the appeal even after the expiry of the period of thirty days, if he or she is satisfied that the appellant was prevented from filing the appeal in time due to some sufficient cause.

Under Section 19 (2), where an appeal is filed by third party, against an order made by a Central Public Information Officer under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

Disposal of First Appeal

The first appeal under sub-section (1) or (2) must be disposed of within 30 days or such extended period not exceeding a total of 45 days from the date of filing, with reasons to be recorded in writing.

Government of India Decision on Disposal of First Appeal

An office memorandum (O.M.) was issued on 9th July, 2007, “if CPIO does not implement the order passed by appellate authority and intervention of higher authority is required, the appellate authority should bring the matter to the notice of the officer in the public authority competent to take action against the CPIO. Such competent officer shall take necessary action so as to ensure implementation of the provisions of the RTI Act” (Disposal of first appeals under the RTI Act, 2005, Department of Personal and Training, No. 10/23/2007-IR, Dt 9th July 2007).

Second Appeal

As per Section 19 (3), if the appellant is not satisfied with the decision of the first appellate authority, s/he should file a second appeal to the Information Commission within 90 days from the date on which the decision should have

been made or was actually received, with the Central Information Commission. Provided that the Central Information Commission may admit the appeal after the expiry of the period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer, against which an appeal is preferred relates to information of a third party, the Central Information Commission, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer, who denied the request.

It is to be noted that *no time limit* is specified in the Act *for the disposal of second appeal*. Deciding appeals under the RTI Act is a quasi-judicial function of the CIC. Hence “Appellate Authority should ensure that justice is not only done but it should also appear to have been done”.

Sub-section (7) declares that the decision of CIC shall be binding. The final level of review is an appeal to the judiciary.

Section 19 (8) provides that the Central Information Commission (CIC) has the power to —

- a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including —
 - i) by providing access to information, if so requested, in a particular form;
 - ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - iii) by publishing certain information or categories of information;
 - iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - v) by enhancing the provision of training on the right to information for its officials;
 - vi) by providing it with an annual report in compliance with Clause (b) of Sub-section (1) of Section 4;
- b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- c) impose any of the penalties provided under this Act;
- d) reject the application.

Under Section 19 (9), the Central Information Commission is required to give notice of its decision, including any right of appeal, to the complainant and the public authority.

Section 19 (10) mandates that the Central Information Commission shall decide the appeal in accordance with such procedure as may be prescribed under the Act.

4.4.3 Power to Impose Penalty

Under Section 20, the Commission is responsible for the implementation and effectiveness of the RTI Act. If the PIO has without reasonable cause:

- i) Refused to receive an application for information or
- ii) has not furnished information within the time specified under sub-section (1) of Section 7 or
- iii) malafide denial of request for information or
- iv) knowingly given incorrect, incomplete or misleading information or
- v) destroyed information, which was the subject of the request or obstructed in any manner in furnishing the information,

The Commission shall impose a penalty of Rs. 250/- each day till application is received or information is furnished. However, the total amount of such penalty shall not exceed Rs. 25,000/-. Only the Commission has the authority to impose penalty. This must be done after giving the PIO an opportunity of hearing to defend his/her actions. The onus of proving that s/he had acted in a reasonable and responsible manner is on the PIO.

Sub-section (2) provides, if there is persistent default by a PIO, the Commission has the power to recommend disciplinary action against the defaulting officer. However, since it is a recommendatory power, it is up to the public authority to take action within the service rules applicable.

4.4.4 Power of Monitoring and Reporting

Under Section 25 of the Act, the CIC exercises its jurisdiction over all Central Public Authorities. It invites online quarterly returns from the Public Authorities (PAs) in a prescribed proforma (Section 25(3), RTI Act, 2005), to fulfill its mandate of preparation and forwarding of the Annual Report to Appropriate Government (<https://cic.gov.in/reports/37>). For this purpose, all PAs, as defined under Section 2(h) of the Right to Information Act, 2005, are required to be registered with the Commission. As per Section 25 of the RTI Act, 2005, there is a legal requirement for the PAs to submit Quarterly Returns to the Commission. Due to efforts made by the Commission, 97.17% PAs have submitted all the four Quarterly Returns during the reporting year of 2019-20 (Annual Report 2019-20, available at <https://cic.gov.in/reports/37>).

The CIC may also suggest measures for improving the functioning of the public authorities in conformity with the provisions and spirit of the Act (Section 25 (5), RTI Act, 2005).

4.5 LANDMARK JUDGMENTS OF THE CIC

- ***Political Parties Come Under the Ambit of the RTI Act***

Landmark judgement that brought political parties under the ambit of the RTI Act was delivered by the Central Information Commission on 3rd June, 2013. Full bench consisting of Shri. Satyananda Mishra and Information Commissioners Shri. M.L. Sharma and Smt. Annapurna Dixit delivered this judgement (Mr. Anil Bairwal vs Parliament of India). The order was issued to adjudicate the RTI applications filed by Shri S. C. Agarwal and Shri Anil Bairwal of the Association for Democratic Rights (ADR) in 2011. The RTI application was filed to bring six national level political parties under the purview of the transparency law. The parties were: 1. Indian National Congress /All India Congress Committee (AICC), 2. Bhartiya Janata Party (BJP), 3. Communist Party of India (Marxist) [CPI(M)], 4. Communist Party of India (CPI), 5. Nationalist Congress Party (NCP) and 6. Bahujan Samaj Party (BSP). The CIC in its historic order stated, “*We have, no hesitation in concluding that INC/AICC, BJP, CPI (M), CPI, NCP and BSP have been substantially financed by the Central Government and, therefore, they are held to be public authorities under Section 2(h) of the RTI Act*”.

On 21st November, 2014 a show cause notice was issued to the political parties by the Commission on the non-compliance of their 3rd June, 2013 order and then on 28th November, 2014, it issued an interim order to six political parties to appear before the Commission for a hearing. But the political parties did not appear.

On 16th March, 2015, the CIC again issued an order of non-compliance with respect to the political parties and stated that the order of 3rd June, 2013 was final and binding. Finally, the ADR filed a PIL on 19th May, 2015 in the Supreme Court to bring the political parties within the ambit of the RTI and the case is still pending in the apex court.

- ***CBI cannot claim exemption under Second Schedule of the RTI Act***

In a landmark judgment (SS Ranawat v. Ashwani Kumar, CPIO & SSP (HQ)), the CIC ruled, “Since CBI is an investigation agency, it cannot claim exemption under Second Schedule of the RTI Act meant for intelligence or security organisation”. “The Central Information Commission (CIC), while allowing a complaint, directed the Central Public Information Officer (CPIO) and Senior Superintendent of Police (SSP) at the headquarters of Central Bureau of Investigation (CBI) to

provide complete information on appointment of its Director. The CIC also directed the PIO and Assistant Inspector General (AIG) to provide the details of movable and immovable property of existing CBI officials working in Delhi and Mumbai. The CPIO had claimed exemption by citing a notification issued by the Department of Personnel and Training (DoPT) that included CBI in the Second Schedule the Right to Information (RTI) Act”.

While giving this judgment on 4th July, 2011, the then Central Information Commissioner said, “Springing such a Notification to shroud CBI with an armour of opacity without giving any reasons, is violative of the promise made by the Parliament in Section 4(1)(d) of the RTI Act. Since no reasons have been advanced, citizens are likely to deduce that the purpose of including CBI in the Second Schedule was to curb transparency and accountability from the investigations of several corruption cases against high-ranking Government officers”.

- **Whether Chief Justice of India is Public Authority under the RTI Act?**

In 2007, an RTI application was filed with the Supreme Court asking among other things, whether the Supreme Court and the High Court Judges are submitting information about their assets to their respective Chief Justices. The application was dismissed by the CPIO. In this case, the CIC has directed the CPIO to provide the information. The aggrieved CPIO, Supreme Court, filed an appeal in High Court of Delhi, where a single judge in case of the Supreme Court of India v. Subhash Chandra Agarwal stated that the CJI is a Public Authority. However, the CPIO filed an appeal against the single bench decision. The larger bench of the High Court in its decision in January 2010 confirmed that the CJI is a public authority and the RTI Act covers the office of the CJI.

- **Showing of Evaluated Answer Sheets**

In the case of *Laxmikanta Giri v. PIO, Council for Indian School Certificate Examinations* (CIC/SA/A/2015/001554, Decided on: 23.01.2017). The appellant filed the RTI application seeking scanned answer sheets of all six subjects attempted by his son Kaushik Kumar Giri in the Council for Indian School Certificate Examinations (CISCE) for 2014-15. The Central Public Information Officer (CPIO) claimed that CISCE was not “public authority” under the RTI Act. The First Appellate Authority (FAA) upheld the order of the CPIO. The appellant approached the Commission. Contention of CISCE was that they are not public authority and hence they are under no obligation to share the information.

The CIC observation was, “...the CISCE is a regulatory body of thousands of schools spread over various states and discharging regulatory duties similar to those of CBSE. The Commission directed the respondent authority to provide certified copies of answer sheets as sought by the appellant”. The CIC relied on the landmark judgment of the Supreme Court in *CBSE v Aditya Bandopadhyay & Ors*, (2011 (8) SCC 497) finally settling principle on sharing the answer sheets of the candidates in the interest of protecting the standards of education through transparency. As per the landmark judgment of the Hon’ble Supreme Court, “the evaluated answer-books of an examinee writing a public examination conducted by statutory bodies like CBSE or any University or Board of Secondary Education, being a ‘document, manuscript record, and opinion’ fell within the definition of “information” as defined in section 2(f) of the RTI Act. It held that the provisions of the RTI Act should be interpreted in a manner which would lead towards dissemination of information rather than withholding the same; and in view of the right to information, the examining bodies were bound to provide inspection of evaluated answer books to the examinees. Consequently, it directed the CBSE to grant inspection of the answer books to the examinees who sought information”. The Supreme court further held, “an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under Section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under Section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees”.

- **Information about illegal/legal migrants**

In an important decision (*Utpal Kumar Roy vs PIO, MHA*), “the Central Information Commission directed the Home Ministry to give clear and categorical information to an RTI applicant who sought copies of records/data pertaining to illegal/legal migrants.

The Commission was considering a Second Appeal filed by one RTI applicant Utpal Kumar Roy, who in his RTI application sought copies of file noting and records in relation to illegal migrants, especially in West Bengal. He approached the Commission contending that the MHA instead of giving specific/desired information transferred his RTI application to multiple Public Authorities. The Chief Information Commissioner Y. K. Sinha also advised the Ministry to maintain a “consolidated record/database regarding identified legal/illegal migrants, in the national interest”.

- **Wife Can Seek Information About Husband's Income Under the RTI**

In a significant order, *“the Central Information Commission partly allowed a wife's appeal, seeking information about her husband's income under the Right to Information Act, 2005. The Information Commissioner, Neeraj Kumar Gupta, while relying on certain High Court orders where it was held that a wife is entitled to know what remuneration her husband is getting, directed the Income Tax Authority to provide the Appellant with ‘generic details’ of the net income of her husband.”* The Commission, however, denied Appellant's request seeking photocopies of income-tax returns filed by her husband. It held, *“the information sought by the appellant regarding copies of income tax returns of her husband, etc. is personal information of third party, which cannot be disclosed under Section 8(1)(j) of the RTI Act”* (Rahmat Bano v. CPIO).

- **Husband Cannot Demand Bank Details of his Wife**

However, in another case, *Pawan Kumar Saluja v. Income Tax*, analysing factual matrix, the CIC held, *“the appellant is not entitled to seek information regarding bank details and income tax returns of his wife which is exempted u/Section 8(1)(j) of the RTI Act, 2005”*. The Information Commissioner stated, *“the filing of the Income Tax Returns by an individual with the Income Tax Department is not a public activity”*. *It is in the nature of an obligation which a citizen owes to the State viz. to pay his taxes, this information cannot be disclosed to the applicant in the absence of any larger public interest”*.

- **On Implementation of the RTI in True Spirit**

In the instant case, an order was passed by the CIC, Bimal Julka, in the second appeal preferred against the Department of Legal Affairs, over its failure to disclose the information sought by the Appellant regarding the names of Advocates appointed by the Department of Legal Affairs for the Ministry of Culture with respect to matters before the High Court of Delhi. Noting the issue of “multiple transfers” of the RTI application, the Commission was *“pained to observe that the Department of Legal Affairs which was the department concerned with advising the Ministries on legal matters and formulation of Rules and Regulations and its interpretation for various Government bodies, faulted in recognising the basic issues pertaining to the RTI Act, 2005 which was meant for dissemination of information to a common man”* (Chandranshu Mehta v. CPIO & ALA Ministry of Law & Justice & Anr). The Commission remarked, *“it is the statutory duty of the CPIO to provide clear, cogent and precise response to the information seekers.”* If *“there is complete*

negligence and laxity in dealing with the RTI applications...it reflects disrespect towards the RTI Act, 2005 itself’.

The Central Information Commission also instructed the authority to convene periodic conferences/ seminars to sensitise and educate its officials and ensure that they discharge their duties, effectively.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Analyse the powers of Central Information Commission to receive complaints and impose penalties.

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- 2) Write a detailed note on appellate jurisdiction of the Central Information Commission.

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- 3) Write a note on any leading case decided by the Central Information Commission.

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4.6 CONCLUSION

The Central Information Commission was constituted in 2005. The jurisdiction of the Commission extends over all Central Public Authorities. The Commission has certain powers and functions mentioned in Sections 18, 19, 20 and 25 of the RTI Act, 2005. These broadly relate to adjudication in second appeal for giving information, direction for record keeping, suo motu disclosures, receiving and enquiring into a complaint on inability to file the RTI, imposition of penalties and monitoring and reporting including preparation of an Annual Report. The decisions of the Commission are final and binding.

The Annual Reports from 2005 onwards are available on its website. In its report, the CIC presents some key information about the disposal of RTI requests by Public Authorities (PAs), such as number of registered PAs with the Commission, opening balance of RTI requests, number of RTI requests received during reporting year, number of RTI requests rejected and percentage of rejection of RTI requests. In recent years, the CIC has improved its performance. A significant downward trend has been noticed in the rejection of RTI requests by the PAs. In the year 2019-20, 13,74,315 requests were received. During the reporting year, a total of 1,52,354 first appeals were filed under Section 19 (1) of the RTI Act, 2005 out of which 96,812 (i.e.63.54%) were disposed of by the designated Appellate Authorities.

To facilitate reporting of pendency and disposal figures on real time basis, the system has been modified. This has resulted in automatic generation of opening balances of pending cases. This includes figures on registration, disposal and closing balance of cases at the end of a particular reference period. The system now generates expandable hyperlink for details of the cases in all four categories i.e. opening balance, registration, disposal and closing balance. Particulars of file number, name of appellant/complainant, PA, date of registration, date of hearing and the date of disposal are shown against each of the above categories. The details can be seen under the hyperlink at www.cic.gov.in.

For efficient working of the CIC, the provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4 (1) of the Act, which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. This will also reduce number of filing of requests for RTI as well as complaints and appeals.

4.7 GLOSSARY

Appellate Jurisdiction: It refers to the power of an appellate court (higher court) to review, amend and overrule the decisions of a trial court or lower courts in India.

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4.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - The Central Information Commission was established in October 2005 under Section 12 of the RTI Act, 2005, through the Central Government Notification in the Official Gazette. For provisions relating to appointment, qualification and management of the CIC. Refer Section 4.2 of the Unit.
- 2) Your answer should include the following points:
 - Discuss the terms and conditions of members of the Central Information Commission with the help of Section 4.3 of the present Unit. The RTI (Amendment) Act of 2019 has brought drastic change in terms and conditions of the service of CIC members. The RTI Rules, 2019 were also made w.e.f. 24th October, 2019 in pursuance of the RTI (Amendment) Act, 2019. The rules are of administrative nature only, now the CIC members will be under direct control of the Central Government. Refer to Unit 3 of the Course too.
- 3) Your answer should include the following points:
 - Refer Section 4.3 of this Unit.

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 4.4 (4.4.1 and 4.4.3) of this Unit.

- 2) Your answer should include the following points:
 - Section 19 provides for the appellate jurisdiction of the Commission. Any person who does not receive a decision within the time specified or is aggrieved by a decision of the CPIO, may prefer first appeal. If the appellant is not satisfied with the decision of the first appellate authority, s/he can file a second appeal in the CIC. Refer Section 4.4.2 of this Unit.
- 3) Your answer should include the following points:
 - Refer Section 4.5 of the Unit, and see the official website of CIC for more details.



UNIT 5 THE STATE INFORMATION COMMISSION*

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 The State Information Commission
- 5.3 Term of Office and Conditions of Service
- 5.4 The SIC: Powers and Functions
 - 5.4.1 Power to Receive and Inquire into Complaint
 - 5.4.2 Appellate Jurisdiction of the Commission
 - 5.4.3 Power to Impose Penalty
 - 5.4.4 Power of Monitoring and Reporting
- 5.5 Appraisal
- 5.6 Conclusion
- 5.7 Glossary
- 5.8 References
- 5.9 Answers to Check Your Progress Exercises

5.0 OBJECTIVES

After studying this Unit, you should be able to:

- Describe the structure of SIC;
- Explain the procedure and working of SIC and its officials;
- Analyse the functions and powers of SIC; and
- Assess and compare the performance of SICs of different States.

5.1 INTRODUCTION

We, the people of India, resolved to constitute India into a democratic society. A true democracy can only exist, when all the citizens have a right to participate in the affairs of the governance of the country. Even this right to participation is not worthy, unless citizens have the right to information in respect of all the issues concerning them. One sided information,

*Contributed by Prof. (Dr) Preeti Misra, Head, Department of Human Rights, School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, Uttar Pradesh.

disinformation, misinformation and non-information, all contribute to create misinformed citizenry. A democracy is not true democracy where source of information is monopolised and views expressed are controlled by the government machinery. In our country, still people are poor and illiterate, not having access to even basic necessities of life. They cannot afford print media, what to say of electronic media. They constitute uninformed citizenry of India. In today's world, the right to information is one of our basic needs. For the sustenance of life, information regarding policies and programmes of the Government is must. Many social movements started in India for the right to information at the grassroots level, inquiring daily earnings of labourers working in the Government schemes and programmes. The right to work and right to minimum wages could get enforced through right to information only. In such a scenario, the responsibility of the authorities who are entrusted with the duty of implementation of the RTI Act, 2005, becomes of paramount importance.

One of the important objects of the RTI Act is “establishment of appellate machinery” of the Central Information Commission (CIC) at the central level and State Information Commission (SIC) at the state level, to monitor and review the decisions of Public Information Officers. In Unit 4, we had discussed about the Central Information Commission. In this Unit 5, we will discuss constitution, powers and functions of the State Information Commission (SIC) in detail. We will also analyse functions and activities of some selected State Information Commissions.

5.2 THE STATE INFORMATION COMMISSION

“State Information Commission” means the State Information Commission constituted under sub-section (1) of Section 15 of the RTI Act, 2005. Sections 15 to 17 of the Act provide for the constitution, terms and conditions of service and removal of the State Chief Information Commissioner (SCIC) and State Information Commissioners (SICs) respectively. Powers and functions of the SIC, including power to receive appeals and impose penalty are discussed under Sections 18-20 of the Act. Besides, the Commission is also entrusted with the duty of monitoring the functions of public authorities and sending report to the State legislature about the implementation of the provisions of the Act. It may also render recommendations regarding efficient working of the Act.

Constitution of the State Information Commission

The State Information Commission shall be a multi member body, just like the Central Information Commission.

Section 15 (1) states that every State Government shall, by notification in the Official Gazette, constitute a body to be known as the (name of the State)

Information Commission to exercise the powers conferred on, and to perform the functions assigned to it, under the Act.

Section 15(2) stipulates that the State Information Commission shall consist of —

- a) the State Chief Information Commissioner, and
- b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

Appointment of the State Chief Information Commissioner (SCIC) and Other Members

Section 15(3) states, “Governor shall appoint State Chief Information Commissioner and the State Information Commissioners on the recommendation of a committee”. This Committee will consist of —

- i) the Chief Minister, who shall be the Chairperson of the committee;
- ii) the Leader of Opposition in the Legislative Assembly; and
- iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation — For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

Section 2 (1) of RTI Act, 2005 states, “State Chief Information Commissioner” and “State Information Commissioner” mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of Section 15.

The SIC: Superintendence, Direction and Management

Section 15(4) makes it clear that the general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things, which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

Qualifications for Appointment of SCIC and other Members

Sub-section 5 of Section 15 lays down qualifications for the appointment of the State Chief Information Commissioner and other State Information Commissioners. It states that the State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public

life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

Sub-section (6) makes it mandatory that the State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

Headquarters of the SIC

Section 15(7) states, “the headquarters of the State Information Commission (SIC) shall be notified at the place specified by the State Government in the Official Gazette. The SIC may also establish offices at other places in the State, with the prior approval of the State Government”.

Decision of the Government regarding Constitution of Benches

On 22nd May, 2005, the Government of India issued an office memorandum regarding clarification on constitution of Benches by the CIC for the purpose of hearing applications and appeals of the RTI. It stated that it has been observed, “some State Information Commissions taking decisions on the complaints and the appeals by constituting Benches. The Department of Legal Affairs pointed out that the State Information Commissions could function through Benches only if there was a specific provision in the Act regarding constitution of Benches. The Department has further stated that provision of Section 15(4) of the RTI Act does not empower the Chief Information Commissioner to constitute the Benches.

In view of this legal position, the Chief Secretaries of all the States were requested to advise the State Information Commission, “decisions on the complaints and appeals should be taken by the State Information Commission as defined in Section 2(k) of the RTI Act, 2005 and not by the Benches of the Commission” (DoPT, 2009).

5.3 TERM OF OFFICE AND CONDITIONS OF SERVICE

Section 16 of the RTI Act, 2005 provides for the term of office and conditions of service of the Chief Information Commissioner and Information Commissioners.

Sub-section (1) of Section 16 states, “the State Chief Information Commissioner (SCIC) shall hold office [*for such term as may be prescribed by the Central Government*] and shall not be eligible for reappointment” (Ministry of Law and Justice, 2019).

Proviso to Section 16 (1) states, “no State Chief Information Commissioner shall hold office after the attainment sixty-five years of age”.

As per sub-section (2), every State Information Commissioner (SIC) shall hold office [*for such term as may be prescribed by the Central Government*], or till the attainment of sixty-five years of age, whichever is earlier. The SIC shall not be eligible for reappointment.

Proviso to sub-section (2) makes it clear, “after vacating his office under this sub-section, every State Information Commissioner shall be eligible for appointment as the *State Chief Information Commissioner* in the manner specified in sub-section (3) of Section 15”.

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

Under sub-section (3), the State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

Sub-section(4), states that the State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under Section 17.

Salaries and allowances payable to and other terms and conditions of service of the SCIC and SICs. Sub-section (5) of Section 16 states, “*The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be prescribed by the Central Government*”. This sub-section provides, “*the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment*”. This sub-section further provides, “*the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this RTI Act and the rules made thereunder*”.

Sub-section (6) stipulates that the State Government shall provide the State Chief Information Commissioner and the State Information Commissioners

with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Term of office and conditions of service

The RTI Amendment Act, 2019 changed the “terms and conditions of service of the State Chief Information Commissioner (SCIC) and State Information Commissioners (SICs)” by amending Section 16 of the RTI Act, 2005. Table 5.1 shows the comparative provisions of the Act of 2005 and 2019.

Table 5.1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Act, 2019 w.e.f. 1st August 2019

Provision	The RTI Act, 2005	The RTI (Amendment) Act, 2019
S. 16 Term of Appointment	The Chief Information Commissioner and Information Commissioners <i>at the state level</i> will hold office for a term of five years or up to the age of 65 years, whichever is earlier.	The Act removes this provision and states that <i>the central government will notify the terms of office for the CIC and the ICs at the State Level</i>
Quantum of Salary	The salary of the CIC and ICs <i>at the state level</i> will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Act removes these provisions and states that <i>the salaries, allowances, and other terms and conditions of service of the State CIC and ICs will be determined by the Central Government.</i>
Deductions in Salary	The Act states that at the time of appointment of the CIC and ICs (at the central and state levels), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Previous government service includes service under: (i) the central government, (ii) state	The Act removes these provisions.

	government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	
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Statement of Objects and Reasons of the RTI (Amendment) Bill, 2019

“While introducing RTI (Amendment) Bill, 2019 in the Lok Sabha, the Government pointed out that the functions of Election Commission of India and the Central and State Information Commissions are totally different. The Election Commission is a constitutional body established by Clause (1) of Article 324 of the Constitution, whereas the Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the Right to Information Act, 2005. Therefore, the mandate of Election Commission of India and Central and State Information Commissions are different. Hence, their status and service conditions need to be rationalised accordingly” (RTI Amendment Bill, 2019).

The Right to Information Rules, 2019

“The Right To Information (*Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission*) Rules, 2019” were framed in pursuance of the RTI (Amendment) Act, 2019. In a press release, the Government stated, “The rules are of administrative nature and pertain to the internal administration of the concerned organisation only. These Rules do not in any way affect the citizens”. The Right To Information or obligations of Public Authorities and Public Information Officers given in Chapter II of the RTI Act inter-alia, the powers and functions of the Information Commissions stay undiluted as the relevant provisions remain unaltered. Nor are the independence and autonomy of these institutions affected in any way” (Ministry of Personnel, Public Grievances & Pensions, 2019).

Removal of the SCIC and SICs

Section 17 (1) states, subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office by order of the Governor *on the ground of proved misbehaviour or incapacity* after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

Sub-section (3) states, “notwithstanding anything contained in sub-section (1), the Governor may by order, remove from office the State Chief Information Commissioner or a State Information Commissioner, “if a State Chief Information Commissioner or a State Information Commissioner- (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner”.

Sub-section (4) states, “if the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall be deemed to be guilty of misbehaviour for the purposes of sub-section (1)”.

Suspension of the SCIC or SICs

The power of suspension has been conferred on the Governor under Section 17 (2). The Governor may suspend the State Chief Information Commissioner or a State Information Commissioner from the office, and if deem necessary prohibit also from attending the office during inquiry, in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference. However, during suspension of such Commissioner, s/he shall be entitled to the pay and allowances, i.e., subsistence allowance as allowed to a Government servant during the period of suspension subject to final order to be passed after the inquiry.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Write a note on the Constitution of State Information Commission. Whether the SIC can constitute extra benches for the hearing of complaints and appeals?

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- 2) Discuss the term of Office and Service conditions of the members of State Information Commission. In this regard what changes have been brought by the RTI (Amendment) Act and Rules of 2019?

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- 3) What are the provisions regarding removal and suspension of members of the State Information Commission.

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5.4 THE SIC: POWERS AND FUNCTIONS

Chapter V of the RTI Act, 2005, Sections 18-20 describe the powers and functions of the SIC, its right to receive appeals and impose penalties. Chapter VI, Section 25 provides for monitoring and reporting about implementation of the provisions of the Act before each House of the State Legislature, where there are two Houses; and where there is one House of the State Legislature, before that House. Now, let us discuss in detail, powers and functions of the SIC.

5.4.1 Power to Receive and Inquire into Complaint

Section 18 (1) empowers the SIC to receive and inquire into a complaint from any person in the following circumstances:

- a) who has been unable to submit a request to a State Public Information Officer, either by reason that no such officer has been appointed under this Act, or because the State Assistant Public Information Officer, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the State Public Information Officer or senior officer specified in sub-section (1) of Section 19 or to the State Information Commission;
- b) who has been refused access to any information requested under this Act;

- c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;
- d) who has been required to pay an amount of fee, which s/he considers unreasonable;
- e) who believes that s/he has been given incomplete, misleading or false information under this Act; and
- f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

Under sub-section (2), where the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

Powers of a Civil Court

Sub-section (3) confers the powers of a civil court to the SIC. It states that while inquiring into any matter under this Section, the State Information Commission shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- a) Summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce the documents or things;
- b) requiring the discovery and inspection of documents;
- c) receiving evidence on affidavit;
- d) requisitioning any public record or copies thereof from any court or office;
- e) issuing summons for examination of witnesses or documents; and
- f) any other matter, which may be prescribed.

Access to Records

Sub-section (4) states that, notwithstanding anything inconsistent contained in any other Act of State Legislature, during the inquiry of any complaint under this Act, the State Information Commission may examine any record to which this Act applies, which is under the control of the public authority, and no such record may be withheld from it on any ground. *This clearly lays down that no record can be denied to the Commission.*

5.4.2 Appellate Jurisdiction of the Commission

The RTI regime constructs two tier mechanisms for appeal. Section 19 bestows the power of entertaining appeal to the Commission. Section 19 (1)

provides that any person who does not receive a decision within the time specified or is aggrieved by a decision of the State Public Information Officer, may prefer first appeal, within *thirty days* from the expiry of such period or from the receipt of such a decision, to such officer *who is senior in rank* to the State Public Information Officer, in each public authority. Proviso to Section 19 (1) states that such officer may admit the appeal even after the expiry of the period of thirty days, if s/he is satisfied that the appellant was prevented from filing the appeal in time due to some sufficient cause.

Under Section 19 (2), where an appeal is filed by third party, against an order made by a State Public Information Officer under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

Disposal of First Appeal

Sub-section 6 of Section 19 states that the first appeal under sub-section (1) or (2) must be disposed of within 30 days or such extended period not exceeding a total of 45 days from the date of filing, with reasons to be recorded in writing.

Second Appeal

As per Section 19 (3), if the appellant is not satisfied with the decision of the first appellate authority, s/he should file a second appeal to the State Information Commission within 90 days from the date on which the decision should have been made or was actually received. It is to be noted that *no time limit* is specified in the Act *for the disposal of second appeal*.

Proviso states, “the Central Information Commission or the State Information Commission may admit the appeal, even after the expiry of the period of ninety days, on the ground that the appellant was prevented by sufficient cause from filing the appeal in time”.

Section 19 (4) states, if the decision of the State Public Information Officer, against which an appeal is preferred relates to information of a third party, the State Information Commission shall give a reasonable opportunity of being heard to that third party.

As per Section 19 (5), in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the State Public Information Officer, who denied the request.

Sub-section (7) declares that the decision of the SIC shall be binding. The final level of review is an appeal to the judiciary.

Deciding appeals under the RTI Act is a quasi-judicial function of the SIC. Hence, the Appellate Authority should ensure that justice is not only done but it should also appear to have been done.

Section 19 (8) provides that in its decision, the State Information Commission, has the power to –

- a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including —
 - i) by providing access to information, if so requested, in a particular form;
 - ii) by appointing a State Public Information Officer;
 - iii) by publishing certain information or categories of information;
 - iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - v) by enhancing the provision of training on the right to information for its officials; and
 - vi) by providing it with an annual report in compliance with Clause (b) of sub-section (1) of Section 4.
- b) require the public authority to compensate the complainant for any loss or other detriment suffered.
- c) impose any of the penalties provided under this Act.
- d) reject the application.

Under Section 19 (9), the State Information Commission is required to give notice of its decision, including any right of appeal, to the complainant and the public authority.

Section 19 (10) mandates that the State Information Commission shall decide the appeal in accordance with such procedure as may be prescribed under the Act.

5.4.3 Power to Impose Penalty

Under Section 20, it is the responsibility of SIC to ensure implementation and effectiveness of the RTI Act. If the PIO has without reasonable cause:

- i) refused to receive an application for information or
- ii) not furnished information within the time specified under sub-section (1) of Section 7 or
- iii) denied the request for information with malafide intention or
- iv) knowingly given incorrect, incomplete or misleading information or

- v) destroyed information, which was the subject of the request or obstructed in any manner in furnishing the information.

The Commission shall impose a penalty of Rs. 250/- each day till the application is received or information is furnished. However, the total amount of such penalty shall not exceed Rs. 25,000/-. Only the Commission has the authority to impose penalty. This must be done after giving the PIO an opportunity of hearing to defend his/her actions. The onus of proving that s/he had acted in a reasonable and responsible manner is on the PIO.

Sub-section (2) provides, if there is persistent default by a SPIO, the Commission has the power to recommend disciplinary action against the defaulting officer. However, since it is a recommendatory power, it is up to the public authority to take action within the service rules applicable.

5.4.4 Power of Monitoring and Reporting

Under Section 25 of the Act, the SIC exercises its jurisdiction over all State Public Authorities. It invites online quarterly returns from the Public Authorities (PAs) in a prescribed proforma, to fulfill its mandate of preparation and forwarding of the Annual Report to Appropriate Government. For this purpose, all PAs, as defined under Section 2(h) of the Right to Information Act, 2005, are required to be registered with the Commission. As per Section 25 of the RTI Act, 2005, there is a legal requirement for the PAs to submit Quarterly Returns to the Commission. The SIC may also suggest measures for improving the functioning of the public authorities in conformity with the provisions and spirit of the Act.

5.5 APPRAISAL

Almost in all the States of India, the State Information Commission is established with its official website linked to the Central Information Commission displaying information about its establishment, activities for the RTI promotion, data regarding complaints and appeals, annual reports, etc. Here, we are discussing activities of the SICs only, for illustrative purpose. You can visit official website of any SIC to get updates about their initiatives for the RTI and record keeping, etc.

“JAANKARI” is a unique “Bihar Government Initiative whereby ICT (Information, Communication and Technology) has been innovatively and effectively employed in making Right to Information Act more broad based and accessible to the common man by bridging the literacy and digital divide. It is a Facilitation Centre with phone in services, which helps people generate RTI applications and get information under the RTI Act. The system has been designed in an “information at your doorstep” format whereby the hassles of physical movement by the common man have been removed.

JAANKARI was set up in January 2007 and has been running successfully generating applications under the RTI Act for people all over Bihar. It was recently awarded as the Best e-Governance Initiative by the Government of India.

In Chhattisgarh, for administrative and functional clarity and convenience, “the work has been distributed between the Chief Information Commissioner and the Information Commissioners for disposal of all cases, appeals and grievances pertaining to allotted districts. Video Conferencing facility is also available at the Chhattisgarh Information Commission. This facilitates hearing of cases by the Chief Information Commissioner and the State Information Commissioner through video conferencing at the Commission Office itself. Training programmes on RTI are organised at district level. Review is done at Block level during meeting with the Public Information Officers. Initiatives have been taken up for dissemination and publicity of the Act at the District and State levels. Advertisement containing message from the Chief Information Commissioner regarding Right to Information is telecasted and broadcasted before the News Bulletin on Doordarshan and Aakashvaani. Efforts are also taken towards sensitising the general public on Right to Information through Doordarshan, Aakashvaani and newspapers discussions as well as Seminars organised by various Government Organisations from time to time” (<http://www.siccg.gov.in>).

The Government of Chhattisgarh has also played an important role in effective implementation of the Right to Information Act. The State Government has also taken measures to train the First Appellate and Public Information officers on the provisions and implementation of the Act. Some of the Voluntary Organisations operating in the State are also actively and meaningfully contributing in generating public awareness regarding the Right to Information through Seminars and forums.

For the promotion of RTI and for generating awareness amongst the masses, “Sikkim Information Commission has produced one short documentary film on the RTI Act with a theme song for screening in the local TV Channel throughout the RTI week to educate the people. The telecast of the film received immense appreciation and several queries from inquisitive individuals mostly on filing of the RTI applications and outcomes. In 2013, a unique Street Play was also staged under the patronage of the Commission in association with local theatre artists in the capital city. The play highlighted relevant topics of the RTI and helped in bringing public consciousness and response in the implementation of the RTI Act, 2005 that guarantees the fundamental right to the citizens” (<http://www.cicsikkim.gov.in>).

The project “TIC Online” is a key initiative driven by Tripura Information Commission (TIC) and National Informatics Centre (NIC), the premier ICT

Organisation of the Government of India under the aegis of National e-Governance Plan (NeGP). This is to acquire the key benefits of ICT and deliver the RTI system over the digital network for the citizens. “TIC Online” facilitates online filing of RTI Complaint and Appeal with the TIC that has institutionalised the convergence of ICT with the Right to Information Act, 2005. This Portal acts as a media for a common man who is seeking information from the government. Present gateway helps the citizen in filing their complaint and second appeal, saving copies of draft complaint/appeal for further review and submission and tracking the status of a case among others.

“TIC Online” has embedded into it a 12 stage workflow that indicates the status of Appeals/Complaints at various levels of treatment beginning from the “Registering” the same to “Consigning the File to the Record Room”. The module is being used for processing all the appeals/complaints filed before the Tripura Information Commission. The module also acts as a single source of information for all Complaints and Second Appeals” (<http://tripurarti.nic.in/>).

In Orissa, the State Information Commission organises Workshop/Seminars at District Headquarters, conducts college level debate competitions and engages in Celebration of the RTI Month and RTI Week. Uttarakhand, Haryana, Mizoram, and Meghalaya ICs are also doing commendable work.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

- 1) Enumerate the powers of the State Information Commission to receive complaints and impose penalties.

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- 2) Analyse the appellate jurisdiction of the State Information Commission.

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- 3) Discuss in brief the role of different State Information Commissions for the promotion of right to information.

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5.6 CONCLUSION

In furtherance of mandate of Section 15(1) of the RTI Act, 2005 almost in all the States of India, the State Information Commission has been established. The law limits the total number of Information Commissioners at ten apart from the Chief Information Commissioner. This does not mean that since eleven commissioner's posts are sanctioned, all must be appointed. The Act sets an upper limit only. The RTI law empowers Information Commission with the powers of a civil court. It is a strong provision, which provides suitable powers to the Information Commission for inquiring into a matter. The Act is a major step for safeguarding the fundamental right of a citizen. If any information is refused to be given by the public authority, it must be justified with reasons. The fact that in case of default a Public servant is liable to pay penalty from his salary, ensures the dignity of information seekers. Because of this penalty provision only, the public authorities are motivated to supply information. Thousands of PIOs have been penalised under this provision.

The biggest lacuna in the Act is that there is no time specified for the disposal of second appeal by the Information Commissioner. The decisions of the Commissions are not merely recommendatory but have the force of law. The Commission should instruct public authorities that all information, except exempted ones, must be published suo moto. The Commission may organise training sessions for the public authorities to put specific information in a particular form on the website or on display boards. It may organise workshops for the maintenance of records. E-governance should be promoted for better output of the Commission.

5.7 GLOSSARY

Summoning: It refers to authoritatively call on (someone) to be present, as a defendant or witness in a court of law.

NeGP: It is National e-Governance Plan (NeGP), which takes a holistic view of e-Governance initiatives in India, integrating them into a collective vision,

a shared cause. It aims at improving the delivery of Government services to citizens and businesses.

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5.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Refer Section 5.2 of the Unit.
- 2) Your answer should include the following points:
 - Discuss terms and conditions of service of the members of State Information Commission with the help of Section 5.3 of the present Unit. The RTI (Amendment) Act & Rules of 2019 have changed the terms and conditions of the service of SIC members. Now they will be under direct control of the Central Government. Refer to Unit 3 of this Course too.

3) Your answer should include the following points:

- Refer Section 5.3 of the Unit.

Check Your Progress 2

1) Your answer should include the following points:

- Refer Section 5.4 (5.4.1 and 5.4.3) of the Unit.

2) Your answer should include the following points:

- Section 19 provides for the appellate jurisdiction of the Commission. Any person who does not receive a decision within the time specified or is aggrieved by a decision of the SPIO, may prefer first appeal. If the appellant is not satisfied with the decision of the first appellate authority, s/he can file a second appeal in the SIC. Refer to Section 5.4 (5.4.2) of the Unit.

3) Your answer should include the following points:

- Refer Section 5.5 of the Unit.

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